

ORIGINAL

NATIONAL INDIAN GAMING COMMISSION  
CLASS II CONSULTATION

Tacoma Sheraton Hotel  
Executive Boardroom  
1320 Broadway Plaza  
Tacoma, Washington  
July 24, 2006

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CLASS II CONSULTATIONS WITH

ELK VALLEY RANCHERIA  
SUQUAMISH INDIAN TRIBE  
METLAKATLA INDIAN COMMUNITY  
CONFEDERATED TRIBES OF WARM SPRINGS  
KLAUOCK COOPERATIVE ASSOCIATION  
SHOALWATER BAY INDIAN TRIBE  
CONFEDERATED TRIBES OF GRAND RONDE  
TOHONO O'ODHAM NATION  
STILLAGUAMISH TRIBE OF INDIANS

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1	Letter from the Confederated Tribes of the Warm Springs Reservation of Oregon dated 7/24/06
2	Letter from the Stillaguamish Tribe of Indians

## A P P E A R A N C E S

For the Elk Valley Rancheria  
2332 Howland Hill Road  
Crescent City, California

Dale A. Miller, Tribal Chairman  
Bradley G. Bledsoe Downes, General Counsel

1 BE IT REMEMBERED that on Monday, July 24, 2006, at 9:05  
2 a.m., at the Tacoma Sheraton Hotel, Executive Boardroom, 1320  
3 Broadway Plaza, Tacoma, Washington, appeared the aforementioned  
4 representatives before Linda M. Grotefendt, CCR, Notary Public in  
5 and for the State of Washington, residing in Renton.

6 WHEREUPON, the following proceedings were had, to wit:  
7

8 MR. HOGEN: Good morning. I'm Phil Hogen,  
9 chairman of the National Indian Gaming Commission. We want  
10 to welcome Elk Valley to the first of our consultation  
11 meetings here in the Northwest. We're convening here at the  
12 Tacoma Sheraton Hotel on July 24, 2006, and we're focusing  
13 on the proposed regulations that the National Indian Gaming  
14 Commission published in the Federal Register on the 25th of  
15 May of this year.

16 There were a couple of sets of proposals: one dealing  
17 with definitions, definitions of facsimiles of games of  
18 chance as that's used in connection with what's Class II,  
19 what's Class III; and a longer set of proposed regulations  
20 that would specify what kind of equipment might be used,  
21 what kind of electronic player stations, for Class-II  
22 gaming.

23 Present here on behalf of the Commission is Associate  
24 Commissioner Chuck Choney. And then we have a number of our  
25 staff members. Penny Coleman is our acting general counsel.

1 Michael Gross and John Hay, at the end, are attorneys in  
2 that office. Natalie Hemlock is from our Washington office  
3 and assistant to the Commission.

4 And we've got our Portland office crew here. You guys  
5 aren't in the Portland region, I guess, but most everybody  
6 else that we'll be visiting with is. We've got Randy  
7 Sitton. Where's Randy? He just stepped out. Our regional  
8 director, Rayanne Morris. She stepped out with him. We'll  
9 keep calling the role till someone is present.

10 Gary Peterson is here, as is Mark Phillips. They're  
11 investigators from that office. Then we've got Alan  
12 Phillips, who is from the Sacramento office.

13 We brought a large group, because all of us have had some  
14 input into this drafting of the regulations, and we want to  
15 get a good handle on what tribes have to say about these  
16 proposals.

17 So with that said, why don't you, please, introduce  
18 yourselves for the record, and then we'd very much like to  
19 hear your comments and concerns regarding what the NIGC has  
20 proposed.

21 MR. MILLER: My name is Dale Miller. I'm the  
22 tribal chairman of the Elk Valley Rancheria. We're located  
23 in Crescent City, California. With me is--

24 MR. DOWNES: Brad Downes.

25 MR. MILLER: --Brad Downes, who is our general

1 counsel. I'd just like to thank you for meeting with us. I  
2 know we're from California, but you know how schedules are.  
3 This works much better for us, so we really appreciate this.  
4 I'm going to let Brad, basically, talk about this. This is,  
5 as you know, a real technical issue, and the tribe needs  
6 somebody else to give us some advice on this, and Brad is  
7 going to do that for us. I think he has a few questions and  
8 thoughts on it.

9 MR. DOWNES: Good morning. We looked through the  
10 regulations that have been proposed -- and just by way of  
11 background, wanted to let you know where Elk Valley sits.  
12 We are in Northern California, along the Oregon/California  
13 border, about 72 miles south and along the ocean; small  
14 county, not a large market.

15 And we have the 1999 Tribal/State compact with the State  
16 of California. Because of the nature of that compact and  
17 the license-allocation provisions of it, we face the burden  
18 that many tribes in California face, that we cannot get  
19 additional licenses for additional machines, to go above  
20 350.

21 Right now, we offer anywhere from about 342 to 349  
22 machines at any given time; in part, to stay below the 350  
23 mark, which affects our revenue share.

24 MR. HOGEN: Why don't you just give us a little  
25 additional background, for the record here, of how that

1 allocation system works, generally? I know that there are  
2 some California tribes that have 2,000 machines, but I  
3 understand they were allocated or -- why don't you explain  
4 that for us?

5 MR. DOWNES: Each of the 1999 compacts allowed for  
6 each -- or I should say they authorized each tribe to go up  
7 to as many as 2,000 gaming devices. It was a somewhat  
8 complex formula that is included in the compact, that allows  
9 for -- or I should say recognized the number of machines  
10 that were operated by the tribe on September 1, 1999, and  
11 effectively grandfathered those in; and for those tribes  
12 that operated fewer than 350, allowed those tribes to  
13 operate as many as 350, as a right, without purchasing any  
14 additional licenses, for machines over and above either what  
15 they had on September 1, 1999, or 350.

16 The license-allocation pool was derived from a word  
17 problem contained in the compact that has led to some debate  
18 about what that number would be. Some folks have said  
19 around 52,000 total machines for the state. That would be  
20 machines that were in operation as of September 1, 1999,  
21 plus additional licenses to operate up to as many as 2,000  
22 gaming devices.

23 The California Gambling Control Commission has asserted  
24 authority over the allocation of those licenses, has  
25 determined there are approximately 52,000 total devices

1 available within the state. As a result, that pool of  
2 licenses and machines has been exhausted, and, therefore,  
3 the tribes can't get additional machines even if their  
4 market would bear those.

5 We face, in particular, the situation where we have a  
6 market that's probably about 400 machines, and, by some  
7 estimates, may be as many as 700. But we can't go beyond  
8 that, and Class II is an alternative that we've looked at,  
9 as have many other tribes. Even some that have 2,000  
10 machines, they have supplemented--because of business  
11 needs--by adding 200 or 400 or 100 different Class-II  
12 devices.

13 So we are looking at, right now: What do we see the  
14 future holding for us? We are trying to take land into  
15 trust for a new resort/gaming operation, and we are looking  
16 at what will we need to operate that, what can we get, and  
17 what the alternatives are for the tribe.

18 Part of that is compact negotiations. Recently, the  
19 governor has stated that he is open to having those  
20 discussions but that his first priority is to make money for  
21 the State. Somewhat of a troubling statement, but he's  
22 never been shy about making that point known, so not a  
23 surprise.

24 We are, again, in a market that probably can't bear the  
25 revenue sharing that some of the other tribes have agreed to



1       since 2004. Those are the types of agreements that, simply,  
2       the market won't bear and we couldn't afford. It would cut  
3       into tribal government services.

4       And so in light of that, we've been looking at Class-II  
5       devices. We've looked into what other tribes have in the  
6       state of California and across the country. So as we've  
7       looked at this, we have some concern; not from, necessarily,  
8       a technical/operational standpoint, but more as what would  
9       be available to us, presumably, in the future and during the  
10      term of our compact, or afterward, should the compact expire  
11      and we're not able to conclude something.

12      And we're not going to offer technical comments, as far  
13      as certain machines work one way and we anticipate that  
14      these machines will work others. But we have some general  
15      concerns that we would like to bring to your attention, and  
16      I'm sure you will get more technical comments from other  
17      folks who actually operate the machines.

18      What we were looking at is: We want to have a viable  
19      alternative, and we think that the machines that are out  
20      there right now, that we understand to be based upon the  
21      NIGC precedent in terms of classification opinions, we think  
22      those are viable. We'd like to have those available to us  
23      without what we see as the potential for those to  
24      essentially be required to go away.

25      We are concerned that there will be some diminishment of

1 our potential position, as far as political or legal issues,  
2 in compact negotiations and otherwise; that we will not be  
3 able to generate the revenues that we could possibly  
4 generate for the membership of the tribe, to provide both  
5 government services and any per capita payments in  
6 accordance with the federally approved revenue allocation  
7 plan.

8 Some of the things that we've looked at that -- again, we  
9 don't have the technical knowledge to share what would be  
10 better or worse; and we will look into that and provide  
11 written comments -- but what I envision on this machine:  
12 51- percent screened, showing a card or cards, and then  
13 another portion of that screen presumably showing any calls  
14 or draws that have been slept, may be problematic. And the  
15 timing that goes with those things will inevitably slow down  
16 the machine and the play for the customer.

17 We are concerned that the minimum number of players that,  
18 as we understand that, has to be six in the beginning, to  
19 get the game started, and then could drop to two during the  
20 play of the game, is of concern, because there are --  
21 without linking, possibly, to other facilities in other  
22 locations within the country, we may not have six people in  
23 there playing those machines in the middle of the night.  
24 But that one customer that we have may not have the ability  
25 to play, and that's loss of revenue for the tribe,

1 potentially.

2 As we read the regulations, we're concerned about this  
3 six-month time period to have new machines, that don't exist  
4 yet, in place; that, as we read the regulations, would  
5 require that, once they're implemented, all the machines  
6 that are effectively in play now would be required to be  
7 taken out and replaced by these new devices that have to go  
8 through research and development, meet the technical  
9 specifications, and then go through the certification from a  
10 gaming lab, that has to be certified to be a gaming lab,  
11 that would be acceptable to the National Indian Gaming  
12 Commission and possibly to a tribal gaming commission.

13 And that sounds like a time-intensive process that,  
14 depending on the time line for these regulations, would be  
15 problematic. It could lead to a vacuum. I realize that  
16 there are provisions in the regulations for extensions that  
17 may be in six-month increments. But there are some  
18 practical issues that arise out of that.

19 And I can take it to a different setting than Class II,  
20 which was: In 1998, in California, when we had the  
21 forfeiture actions prior to, of course, the 1999 compact, we  
22 had employees that started to leave the facility and cannot  
23 be replaced. So if this comes in in a predominantly  
24 Class-II facility, you're going to see departure of  
25 employees, and you're going to have people who are in flux

1 and a community that will be on high alert, if you will,  
2 because of the fact that, at any point, their jobs are in  
3 jeopardy, and they may feel the facility will close.

4 And so while the ability to get a six-month extension is  
5 available, I think it's probably not enough time and it's  
6 probably not enough comfort to employees, gaming managers,  
7 the tribe, most importantly, that have to operate these  
8 facilities and live with it, with the outcome, afterward.

9 We faced it in California where folks went and found new  
10 jobs and they couldn't be replaced. And it was in every  
11 hearing before the court that they would want to know what's  
12 going to happen: What happened? Are we closed? We had  
13 customers: "Are you closing?" "I hear you're closed."

14 And it leads to a falloff in the business, and it has  
15 dramatic results that are hard to overcome. They don't  
16 instantly come back by either new machines coming in or  
17 other things happening. A successful hearing or an  
18 extension doesn't make people want to come back to work if  
19 they're going to face the same problem in six months. They  
20 want security in their positions.

21 So one of the questions that I have is: What would be  
22 the dates or time line for finalizing the regulations, and  
23 what would be the process involved in that? So maybe the  
24 representatives here can answer that.

25 MR. HOGEN: Okay, we, of course, won't know, (a)

1 will there be regulations; or, (b) what they'll look like if  
2 there are regulations; or, (c) when that will all happen, if  
3 it does. But on the drawing board right now is, by this  
4 fall, to, after listening carefully to tribal comments and  
5 other comments, publish a final set of regulations.

6 And then they would have an effective date that would be  
7 some period of time after the publication. And that would  
8 open a six-month window, that you mentioned, for tribes to  
9 get certified the machines, Class-II machines, that they  
10 have on the floor.

11 And this is not the first concern that we've heard  
12 expressed. Others have said there's going to be a big line  
13 at the gaming labs, to get this done, and it's not enough  
14 time. And maybe it isn't enough time. We're going to try  
15 to evaluate that and figure it out.

16 But we want to be realistic as well as getting to the  
17 goal that we're seeking, and that's to have a brighter line  
18 that separates Class II and Class III.

19 So, John, can you further comment on the schedule of the  
20 implementation of that?

21 MR. HAY: As of now, the comment period ends on  
22 August 23rd. Obviously, we'll get many comments in, and we  
23 will be responding to each of them in our final proposal.  
24 So it would take us a minimum of 30 days to read through all  
25 those comments and put something together. Then there's the

1 larger question of whether or not we're going to go forward  
2 with the regs. So obviously, there will be discussions  
3 amongst the commissioners if that's the direction they want  
4 to head in.

5 After that period, then we can move forward to the  
6 Federal Register and have that published. The regulations  
7 are effective immediately upon publishing them. However,  
8 then that six-month period, as it stands in the proposed  
9 regs now, would kick in.

10 And so if you're talking about what is the fastest time  
11 that these things could be in effect, you're probably  
12 talking April of next year. And that would be if everything  
13 clicks off on schedule and is done at a fast pace.

14 MR. DOWNES: I understand.

15 MR. HOGEN: Lest I forget, when you were talking  
16 about the number of players, I think, as drafted, the regs  
17 say, before you can start playing, the machine will try to  
18 allow at least six players to play. However, if, after two  
19 seconds elapses, only two players, or two or more players  
20 but not six, have joined, you could go ahead and play.

21 So you couldn't play if there was only one guy in your  
22 casino and you weren't connected with anybody else. But if  
23 you were connected with somebody else and there was one  
24 other player there, or if there was one other player in an  
25 unconnected facility, two could play. But there would be a

1 delay there for the daub.

2 MR. DOWNES: Right. Let me ask, on the number of  
3 draws that are envisioned in any given game -- I want to  
4 make sure I'm understanding that correctly. I was hoping  
5 you could share with me what the intent is, what you believe  
6 it says. That would be helpful for us.

7 MR. HOGEN: Okay. I think the simplest  
8 explanation is: You can't end the game or have a game  
9 winner after one draw. And the computer knows all. It  
10 knows what numbers are on everybody's card, so they know,  
11 when they call so many numbers, if they call one more, it  
12 will end the game. So that first draw has to be less than  
13 that number.

14 And most of the proposals that we've seen, in terms of  
15 our advisory opinions, wouldn't have to be this way. But  
16 often, I think it would be. Then that next draw, that  
17 second draw, would give a player or players a game-ending  
18 winning number.

19 And the game could end then, although it could  
20 contemplate continuing the game, to give away additional  
21 consolation prizes within that particular game. And if  
22 somebody had that number but slept, didn't daub their  
23 number, you'd need to draw again till somebody did.

24 MR. DOWNES: Fair enough. So related to how the  
25 machine -- right now, the most recent machines that have

1       come out, somebody will be able to just press the daub  
2       button -- indicate "daub now," press the button, press the  
3       screen, and then be able to just move forward that way with  
4       whatever delays are inherent in the process for multiple  
5       draws. And what is the time frame between the draws?

6               MR. HOGEN: John, can you explain the sequence?

7               MR. HAY: Well, we've calculated that the entire  
8       game will take about 10 seconds. And so you would have a  
9       ball draw, then there would be two seconds in which players  
10      would have the opportunity to daub. Then you would have  
11      another ball draw, and then there would be another two  
12      seconds to have that second opportunity to daub. And then  
13      there would be a final daub, which would be to claim your  
14      prize. So that's the actual game.

15              Then you have to add on the two seconds to the beginning  
16      of the game for players to join in. And so that would be  
17      the entire -- if it ended after the second draw. Obviously,  
18      you could go on further and have it longer if that's what  
19      you wanted it to do. But that would be how the game would  
20      lay out.

21              MR. DOWNES: Would it be acceptable to have this  
22      networked between multiple facilities, then?

23              MR. HAY: I believe that would be allowed, and we  
24      kind of envisioned this so that facilities such as yours,  
25      that are in somewhat remote locations -- and, you know, you



1 can pose a question about: What about the players there at  
2 midnight on Sunday night? Will they be able to play?

3 So they'll be linked to other gaming facilities around  
4 the country. So they wouldn't be waiting for the person to  
5 show sitting next to them, but it could be linked either to  
6 the entire state, or to the tribe that's down the road.

7 MR. DOWNES: What does the NIGC envision will  
8 happen with the existing devices? What will happen to  
9 facilities, say, in Oklahoma or others, where you have 2- or  
10 400 machines that were brought in based upon the earlier  
11 classification opinions?

12 MR. HOGEN: Well, we don't know for sure, and  
13 we're trying to gather more information in connection with  
14 that. We are cautiously optimistic that some considerable  
15 number of those can be reconfigured or modified with some  
16 programming to comport with these regulations, I would say.

17 As you observed, there are a number of machines in play,  
18 being played in accordance with NIGC's advisory opinions,  
19 which are informal and not final agency actions and so  
20 forth. But many of those that were built to do that aren't  
21 currently being played exactly that way.

22 That is, all of these advisory opinions contemplated this  
23 multiple-daub player participation, and some of them are now  
24 configured so that the machine does it all, and you push the  
25 button once, and the machine aids the player, so to speak,

1 with everything else, which we believe is more automation  
2 than Congress intended when they said you can't have an  
3 electronic facsimile of a game of chance.

4 MR. CHONEY: Of course there are some of those  
5 that can't be configured. Therein lies the problem with  
6 these classification definition standards, and those would  
7 have to be done away with.

8 MR. DOWNES: I was looking at some of the  
9 facilities that I've been in in different parts of the  
10 country that have some of the newer technology, where -- I  
11 know when I've sat down to play, you have to press three  
12 times and work through those issues, that you can't sleep.  
13 So I'm just trying to see what happens with those: if  
14 they're going to be slowed down or taken out, or what will  
15 happen.

16 MR. HOGEN: And this is exactly the reason, or one  
17 of the reasons, we're writing these regulations: so the  
18 tribes won't find themselves in a fix: Well, we just spent  
19 millions of dollars on equipment and all of a sudden  
20 somebody says it's illegal or obsolete.

21 Rather, you'll have a guideline to go by. You will know  
22 what you can use. Manufacturers will know what to build.  
23 Tribes will know, when they go to the negotiating table:  
24 This is what we can do if we can't make the compact or in  
25 addition to the compact we get.

1 MR. DOWNES: On the gaming labs provision, we had  
2 some questions about that. I notice that the tribe can  
3 request a certification from the gaming lab. Would that be  
4 the only route that you could get a certification?

5 MR. HOGEN: Yeah. The regulations use this  
6 device, or vehicle, of having an independent, qualified  
7 laboratory evaluate the machine to see that it complies with  
8 the regulations. So somebody that has been certified to do  
9 that would have to have found that this complies with the  
10 regulations.

11 Now, not to say that a tribe or tribes couldn't put  
12 together their own lab and come and get it certified by the  
13 NIGC and that would be one of the labs they would go to.  
14 But right now, I don't believe any tribes have done that.

15 MR. DOWNES: I was wondering if, let's say, a  
16 manufacturer does his research and development, creates this  
17 machine that they think meets the standards, could they  
18 independently go to a lab that's been certified by the NIGC  
19 and make this request for certification that it meets these  
20 standards?

21 MR. HOGEN: I think we say that the tribe has to  
22 be a sponsor, more or less, of it. And typically, that  
23 wouldn't be difficult for a manufacturer to get done.

24 MR. DOWNES: I don't know that it would, but it  
25 just seems that it may give the manufacturers incentive to

1 develop things and bring the certification as a potential  
2 selling point, if you will, to the tribes, that it has been  
3 certified by an appropriate lab, that sort of thing.

4 MR. HOGEN: Well, I expect that IGT could go to  
5 GLI, for example, and say: "We built this machine. Can you  
6 test it and tell us if it complies with NIGC's regs?" And  
7 they would tell them. However, that answer wouldn't be  
8 final and official. If they did find, you know, Elk Valley  
9 or somebody else who said "we like this machine," then go  
10 back to GLI, they wouldn't have to start all over again.  
11 They've already done the work. They just have to verify  
12 that that's the same one. It would be a done deal.

13 MR. DOWNES: I believe there's a requirement that,  
14 if the tribal sponsor asks for a certification from this  
15 lab, that the report has to then be provided to the NIGC,  
16 and that raises a couple of questions. One is--maybe it's  
17 the obvious one--what if you don't like the results?

18 MR. HOGEN: If you're the tribe or the  
19 manufacturer and maybe you don't like the results?

20 MR. DOWNES: If the tribe is asking for it and if  
21 the tribe doesn't like the results, they say it doesn't meet  
22 it, then the tribe says, "Okay, we can't have it, so why  
23 would we provide the report to NIGC?" I read it that it's a  
24 requirement that the report has to go to NIGC no matter what  
25 the results would say.

1 MR. HOGEN: Right now, the only way to get to  
2 court, so to speak, would be NIGC making an objection to the  
3 finding and that finding be appealed to the full Commission,  
4 as opposed to just the chairman's decision, and then having  
5 final agency action that it would be appealed from. The  
6 scenario doesn't have an avenue to get to court right now,  
7 and that's a concern. We're thinking about: Should there  
8 be a modification to that? We haven't --

9 MR. HAY: If I could add something to that. In  
10 your scenario, you asked the question, "What if the tribe  
11 doesn't like it?" The tribe, at that point, as it does now,  
12 has the choice of not bringing that machine in.

13 MR. DOWNES: Right.

14 MR. HAY: So they could just make a decision and  
15 tell the Gaming Commission. There's the other side of it,  
16 where a gaming lab said that this machine was Class III and  
17 the tribe didn't like that decision, and that's a scenario  
18 that the chairman pointed out.

19 MR. DOWNES: Right. I guess also related to it,  
20 what happens if there's a dispute among labs on the same  
21 machine? Simultaneously, two tribes don't realize they've  
22 requested -- they've gone to two different labs. One says  
23 yes, one says no; it meets the standards, it doesn't meet  
24 the standards.

25 MR. HOGEN: If I was the tribe, I'd go with the

1       one that said it's okay.

2               MR. DOWNES: I understand that. But now, at least  
3 as this is written, you may have two reports coming to you.  
4 Then how is that going to be done?

5               MR. HOGEN: Well, I assume we would -- my guess  
6 is, in most cases, if a certified lab had a problem with it,  
7 probably NIGC would have a problem with it. That wouldn't  
8 always be the case, but that would be likely. We would  
9 probably object to that finding; in fact, agreeing with the  
10 other. And then you'd have the scenario set up where an  
11 appeal could be taken.

12              MR. DOWNES: Whereas, if, for instance, as John  
13 pointed out, if you get an opinion that says this doesn't  
14 meet the standard--it's either a Class III or it just  
15 doesn't meet the standards--if you, as the tribe -- we're  
16 assuming is going to be responsible and say, "Okay, we're  
17 not bringing this in, because, in our situation, it would  
18 exceed the cap, or it doesn't meet the standards and we  
19 don't want any trouble."

20              MR. CHONEY. What you're talking about has  
21 happened in a lot of the states; and specifically, Oklahoma,  
22 in which they listened to a vendor. The vendor says, "This  
23 is a Class II," when, in fact, it wasn't. And it caused  
24 them a lot of consternation when our field investigators  
25 went out there and said, "These are Class III machines." It

1 cost them a lot of revenue in the long run because they had  
2 to get those machines out of there, and if they didn't, they  
3 were subject to enforcement action.

4 MR. DOWNES. Well, that's what we would be trying  
5 to avoid; but at the same time, trying to find a way to deal  
6 with all the issues that surround this. Obviously, getting  
7 a final determination from the agency that then the  
8 appropriate party can litigate, if that's what's necessary,  
9 is important.

10 But at the same time, as I look at it, if you don't like  
11 the opinion that comes out, for some reason, as the tribe, I  
12 don't know that you should have to have a requirement to  
13 submit that to the NIGC.

14 MR. CHONEY: Well, you might want to report it to  
15 your client tribe. If you do run into that situation, you  
16 let us know before you proceed with, you know, spending  
17 billions on some machines that could, you know, in the long  
18 run, be questionable. But let us know.

19 MR. GROSS: Actually, Brad, the obligation to  
20 provide the report to NIGC is not on the tribe. It's on the  
21 lab. And that was put in for the purpose just of the  
22 Commission's oversight. And on the rare occasion when the  
23 lab comes to a conclusion that seems a bit off the wall, the  
24 chairman has the opportunity to object and correct. That's  
25 the simple motivation behind having that there.

1 MR. HAY: We were hoping, in drafting these  
2 regulations, that that wouldn't occur; that they'd be clear  
3 enough that you couldn't have objections amongst labs,  
4 because that's a situation, as we see it today -- in many  
5 states, you'll go up there, and you'll have one tribal  
6 gaming commission deciding that a game is Class II while  
7 their neighbor across the street decides "no, it's Class  
8 III." So we're trying to make these as clear as possible so  
9 there won't be these questionable grey areas that can go  
10 either way.

11 MR. DOWNES: Now, when the NIGC receives the  
12 report, the 60-day period elapses, there's been no  
13 objection, it goes up on the Web site. Is every tribe in  
14 the country able to rely upon that?

15 MR. HOGEN: Yes.

16 MS. COLEMAN: That's the presumption.

17 MR. DOWNES: Will that presumption appear in the  
18 regulations in some form? Because, right now, it says it's  
19 going to appear on the Web site as a fact: "We've received  
20 this report. We've not objected to it." Will it be  
21 justifiable to rely upon that, then?

22 Because I realize, at some point in the future, the  
23 chairman could then object to something with that, if  
24 circumstances allow. I don't know that you're completely  
25 time-barred from objecting in the future.



1           So I'm just kind of wondering how you're going to deal  
2           with Commissioner Choney's issue. You spend millions of  
3           dollars, you think the 60 days has passed, and then some  
4           other 30-day period comes up, and now it's off the Web site;  
5           at the time, it was on. What do you do?

6           MR. HOGEN: Well, up the road here, Bill Gates and  
7           Microsoft build operating systems, and then three months  
8           down the road, they figure out there's a bug there they  
9           didn't anticipate. I wouldn't be surprised if that could  
10          happen in the gaming world as well. And, if, in fact, there  
11          was kind of a fatal flaw that wasn't immediately apparent,  
12          we'd have to revisit that.

13          But I think we'd try to make it as foolproof as possible  
14          and try to avoid that situation where somebody had relied,  
15          to their detriment, on the NIGC's apparent approval. We  
16          can't guarantee we're going to get it absolutely right every  
17          time.

18          MR. DOWNES: I understand. Just one of the things  
19          that I'd like to see, from the perspective of a tribe that  
20          wants to rely upon what's on the Web site at that time, is  
21          some sort of presumption that you can rely upon that and how  
22          that builds into the regulations.

23          I realize that, like you said, there could be changes in  
24          software and whatnot that cause issues. But trying to  
25          figure out a way that you can rely upon what's on the Web

1 site.

2 We had three or four requests related to our concerns.  
3 One is that, because we don't operate, you know, and we're  
4 not manufacturers -- we don't operate Class II and we're not  
5 manufacturers, we're interested in whether the NIGC might  
6 conduct a general public hearing, if you will, somewhere  
7 where manufacturers may be able to come in and share some of  
8 their concerns about how long this may take, what the costs  
9 will be, those types of things; whether the machines can, in  
10 fact, be converted that exist now. And there may be some  
11 opportunity for collaborative discussions.

12 I'm sure they're going on on an individual tribal basis,  
13 but it might be nice to have a hearing in a public setting.  
14 I don't know if the NIGC has considered that or not.

15 MR. HOGEN: We are considering that. We haven't  
16 finalized a decision, but that's under active consideration.

17 MR. DOWNES: I realize sometimes you have, and  
18 sometimes you get other things in there too, other  
19 perspectives, but as far as the technical standards and what  
20 happens with that, will there be an opportunity to deal with  
21 that in a more--how do I describe it?--comprehensive  
22 fashion, that deal with technical issues with this and have  
23 some extended period of time once we are able to chat with  
24 manufacturers who deal with those issues so we can give,  
25 maybe, better comments?

1 MR. HOGEN: Yeah. An excellent point and  
2 something I should have mentioned at the outset. We started  
3 our process, actually, years ago now, putting together an  
4 advisory committee, publishing five drafts of classification  
5 standards, two drafts of a larger set of technical  
6 standards.

7 When we came out with these classification standards in  
8 May, we discovered that, given advances in technology, the  
9 classification standards got rather stale. They needed some  
10 updating. So we are doing that, and we are hopeful that,  
11 within days, we would be able to publish, as a proposed  
12 regulation, those technical standards and have similar time  
13 lines to bring the comment period to a conclusion. And we  
14 would very much appreciate comments with respect to not only  
15 each package, but how they interface with our work.

16 MR. DOWNES: So will there be an extension, then,  
17 of this comment period at some point, to deal with that?

18 MR. HOGEN: That's possible, depending on how soon  
19 we can get these others out there.

20 MR. DOWNES: And then, as far as -- I know we  
21 talked about it a little bit earlier -- about the existing  
22 machines, but if there's some way that those could be  
23 grandfathered in in some way or the transition period be  
24 extended for some amount of time so that if, for instance,  
25 we happen to get any, we would like to be able to operate

1 those and feel comfortable that they meet the standards that  
2 have been put out so far, informally. And then we're not  
3 getting into a deal that it's only going to be six months,  
4 or next April; we don't have to be removing them.

5 MR. HOGEN: Well, we will consider that. But if I  
6 were a tribe who didn't have machines today, thinking about  
7 investing in some before this process was completed, I think  
8 I'd try to be sure to get machines that looked a lot like  
9 what these regulations project, or could be easily  
10 converted.

11 MR. DOWNES: That's sound advice.

12 MR. HOGEN: Well, thank you very much for your  
13 comments with respect to our classification standards. You  
14 had a classic example there of why you need these standards.  
15 You're looking in a crystal ball, trying to make some  
16 decisions.

17 You know, there are those on one side of the issue that  
18 say: "Well, we should be able to have technology so you can  
19 play really fast, fun, Class II games." We agree with that.  
20 But if they become so fast that you can't tell the  
21 difference between those Class III and Class II machines  
22 sitting on your floor, we've lost the distinction, and we've  
23 lost something that Congress intended in the Act.

24 And we're concerned about what would happen if we don't  
25 maintain that distinction, so we're trying to get to the

1 right place, trying to provide the tribes the opportunity to  
2 have viable economic opportunity here to supplement what  
3 they have under compacts or can use if they don't have  
4 compacts, but to maintain that recognizable difference.  
5 Therein lies the challenge.

6 MR. DOWNES: What do you see -- I'm sure you hear  
7 from many different sources. What do you see as the  
8 possible outcome of the blurring of those lines?

9 MR. HOGEN: I think, if the day came where you  
10 couldn't tell a Class II and Class III device apart, in  
11 terms of the players' experience and recognizing one from  
12 the other, first of all, tribes probably would abandon Class  
13 III. And the states would push back and either say: "Hey,  
14 this isn't what was intended," and ask Congress to make a  
15 dramatic change that probably wouldn't be good for the  
16 tribes.

17 Or we could end up with the State saying: "Why are we  
18 just letting tribes have these electronic games? Let's let  
19 everybody else do that." And then who is going to drive out  
20 to the reservation when they can do it in downtown Los  
21 Angeles or whatever? Those are our concerns.

22 Okay. That will bring to conclusion our classification  
23 consultation.

24 (The classification consultation with Elk  
25 Valley Rancheria concluded at 9:48 a.m.)

## A P P E A R A N C E S

For the Suquamish Indian Tribe  
P.O. Box 527  
Suquamish, Washington 98392

James Armstrong, Gaming Commission Executive  
Director

Roger Contraro, Gaming Commission Vice-  
Chairman

Michelle Hanson, Senior Tribal Attorney  
Leonard Forsman, Tribal Chairman

(The consultation with the Suquamish Indian  
Tribe began at 10:03 a.m.)

1 MR. HOGEN: Good morning and welcome. I'm Phil  
2 Hogen, chairman of the National Indian Gaming Commission.  
3 We welcome the Suquamish Tribe to this consultation session.  
4 We're focussing on the proposed regulations that NIGC  
5 published in the Federal Register on May 25th relating to  
6 both the definitions used in determining what's Class II and  
7 what's Class III and some classification standards that  
8 would set out, with some specificity, what equipment may be  
9 used, without a compact, to play Class II electronic player  
10 stations in gaming.

11 We anticipate publishing, in the near future--very near  
12 future, hopefully--some companion technical standards that  
13 would be very technical in nature. All of this is the  
14 product of an exercise NIGC has been involved in for a  
15 couple of years now.

16 We formed a tribal advisory committee. We published five  
17 modified proposals of our classification standards on our  
18 Web site, and we were thinking about going to the Federal  
19 Register last spring. But the Justice Department expressed  
20 some concerns. We negotiated with them and so forth. We're  
21 doing this at this time.

22 And so we are very eager to hear what tribes have to say  
23 about our proposals. Hopefully, if there are things we  
24 haven't thought of in connection with these drafts, it will  
25 be brought to our attention.

1           The team that is helping us with this -- Commissioner  
2           Chuck Choney and I currently make up the Commission. Penny  
3           Coleman is our acting general counsel. From her office are  
4           attorneys Michael Gross and John Hay. Natalie Hemlock is an  
5           assistant to the Commission from our Washington, D.C.,  
6           office.

7           And from our Portland region, Randy Sitton, who I think  
8           you know, is here. And Rayanne Morris, who is up in our  
9           Bellingham office. And then Mark Phillips, who is an  
10          investigator. And Alan Phillips, who is from the Sacramento  
11          office. And I guess that's the team that's here.

12          And all of the folks from Washington have had some input  
13          into this. That's why we brought a big team here to hear  
14          what tribes have to say in this connection.

15          So for the record, would you introduce yourselves and  
16          tell us where you fit in to your tribal and gaming  
17          operation? And Gary Peterson, an investigator from our  
18          Portland office, also just walked in. So welcome. Go  
19          ahead.

20                 MR. FORSMAN: I'm Leonard Forsman. I'm the  
21          chairman of the Suquamish Tribe, and I represent our tribal  
22          council and the membership.

23                 MS. HANSON: I'm Michelle Hanson. I represent the  
24          government, and I have, in the past, represented, also, the  
25          Tribal Gaming Commission. We now have an attorney named



1 Jamie Weber, who is focussed on representing them on a day-  
2 to-day basis. But I guess the classification issues are  
3 really more a government-to-government, so thank you for  
4 having us.

5 MR. CONTRARO: Roger Contraro, vice-chairman of  
6 tribal gaming for the Suquamish.

7 JAMES ARMSTRONG: James Armstrong, the executive  
8 director for the Suquamish Tribal Gaming Commission.

9 MR. FORSMAN: I'd like to note that both Roger and  
10 Jim are members of the Suquamish Tribe as well. I'd like to  
11 start out by just thanking you for the opportunity to speak  
12 to you. This is going in the right direction. However, we  
13 feel that today's discussion alone is not a meaningful  
14 consultation for the Suquamish Tribe.

15 We feel that there should be more consultations conducted  
16 for the tribes nationwide. We can only give general  
17 comments, of course, because we're being recorded, and we  
18 would like to emphasize the fact that, although we  
19 appreciate this opportunity, we think that the NIGC should  
20 go further in their consultation efforts.

21 Most of the time, the consultations have been inadequate  
22 and too few, and we feel that sometimes the tribes aren't  
23 given an opportunity to weigh in as they would like to.  
24 There's been very limited consultation, primarily in three  
25 states--in Washington, California, and Oklahoma--and a few

1 of the other states, such as Florida and Montana, might be  
2 needing more work, because Class II has a big impact on  
3 them.

4 We'd like the NIGC to hold at least one public hearing on  
5 the Class II/Class III classification. Individual  
6 consultation and speeches and trade shows do not substitute  
7 for public hearings, and we'd love to have that. I know  
8 you've heard that a lot from tribes. Tribes are very  
9 adamant about the fact that we need to have constant and  
10 clear communication. That is one of the big roles of NIGC  
11 and their advisory board, that you get out there and talk to  
12 the tribes. And I know you have limited resources. However  
13 it's probably a good investment to do that.

14 Now, I'm going to have Jim talk.

15 MR. ARMSTRONG: Right now, I look at this  
16 classification standard between Class II and Class III  
17 machines as being very important in your role as the NIGC,  
18 as the federally elected regulator, the tribal regulator,  
19 and the state regulator.

20 And my biggest concern about this is the impact that this  
21 classification will have on not only my tribe, but all  
22 tribes within the United States, and, more or less,  
23 Washington State, because I can't speak for the other  
24 tribes.

25 But we need to look at these classifications really

1 close, to see what the impacts of this classification is  
2 going to be. And like Mr. Forsman said, we would like to  
3 meet more at a public hearing, possibly at the point of:  
4 Once we've got the final rule and you've received the  
5 comments from all the tribes from this area, then we would  
6 certainly like to request one more public hearing to discuss  
7 it.

8 Final rules are what they are. They're final rules. So  
9 we want to work with NIGC as much as we possibly can. But  
10 we also believe that we have a voice in the final rule. So  
11 one of my requests would be that, before publishing it or  
12 going final rule on it, that we get a copy. I request that  
13 we have copy coming to us so we can review it before it's a  
14 final rule.

15 And I think we need to be able to give all the tribes an  
16 opportunity to look at it. And basically, the public  
17 hearings: have one more final say-so on your final rule  
18 before it becomes rule or law.

19 I'm very concerned about the classification because it's  
20 going to have a large impact, not only economically, but on  
21 the machine process itself. So we have to look really close  
22 at it.

23 My main goal is to work with the NIGC, work with the  
24 State, work with everyone to make sure everything is in  
25 compliance. And in some cases, in reading this rule for

1 comment period -- I'm not saying that you -- it's kind of  
2 written in sort of a -- five seconds here, two seconds here,  
3 you know; and we need some more clarification. But we need  
4 clarification on a "facsimile."

5 MS. HANSON: One of the problems is that you've  
6 got a definition of "facsimile" in two different  
7 regulations. As we understand it, it's going to be in the  
8 technical part of it, and part of it's already in the  
9 Federal Register publication you've already done.

10 And we've got technical standards coming. They go  
11 together, and if you only have 30 days to look at those,  
12 then we're really not getting an adequate review in the time  
13 you're giving us, the tribes, a chance to fully vet the  
14 issues that might come out of that. We'd like to see that  
15 expanded.

16 MR. FORSMAN: In general, the difference between  
17 Class II and Class III, we feel IGRA defined that, and the  
18 proposed changes, some of the changes are going way beyond  
19 what has already been defined by it. And we feel that those  
20 Class III games are those where you play against the machine  
21 or against the house to win prizes, and Class II are games  
22 of chance where a player plays against at least one other  
23 player. And we feel the Congressional Record is also clear  
24 on this, and the federal courts have also provided clear  
25 guidance on this.

1 And Michelle, you were going to talk a little bit about  
2 the proposed rules with the classification.

3 MS. HANSON: Right, I think that, you know, as you  
4 know, the Washington tribes also negotiated with the State  
5 of Washington after the tribes won their friendly lawsuit,  
6 in which the federal courts said: "Yes, electronic gaming  
7 devices are subject to negotiations here; not slot machines,  
8 but electronic gaming devices."

9 And frankly, the State of Washington did the same thing  
10 that you're doing right now. They wanted to say "X number  
11 of seconds after you push a button before you got a result"  
12 and all sorts of things and restrictions that essentially  
13 slowed down the game.

14 But that, in itself, has nothing to do with whether or  
15 not a game is classified as Class II or Class III. I think  
16 that, as the chairman said, it's already stated in IGRA.  
17 Class III is a game that you play against a machine. Class  
18 II is a game that players play against each other for a  
19 prize.

20 And I don't think that whether or not you have, you know,  
21 two-inch-high: "This is a bingo game," or five-by-five-inch  
22 cards on the screen or whatever -- I don't think that has  
23 anything to do with whether or not it's a Class II or a  
24 Class III machine.

25 And I think Suquamish is concerned that perhaps the

1 Department of Justice has, you know, put into play, through  
2 you, some of these restrictions that basically make the  
3 games economically unfeasible. And I don't think that  
4 that's what IGRA is about. It is about bringing tribes  
5 economic development. It's been a very good tool, and  
6 there's no reason whatsoever to slow it down.

7 All of these things -- the two-second rule, the amount of  
8 delays that occur between pushing, and how many people you  
9 get on the play -- all of those really have absolutely  
10 nothing to do with the classification.

11 So we'd like you to rethink and reconsider what you put  
12 into your final rule.

13 MR. ARMSTRONG: I'm looking in the context of the  
14 one thing that I'm concerned about. We've got it published  
15 on May 25th, and we have an -- August 23rd is it? -- an  
16 August 23rd comment period. And we also have this  
17 consultation period. And I'm looking in the proposed final  
18 rule, and I'm saying: "Okay, what is the economic impact to  
19 my tribe for this rule? What is the economic impact for the  
20 vendors and/or anyone else who is involved in this show?" so  
21 to speak?

22 So in developing of the classifications here, we also  
23 have to look back at the building of the machine itself, to  
24 make sure that it meets your requirement, first off. And I  
25 don't think that the time line for coming into compliance --

1 I believe it's six months down the road, and I don't think  
2 that the vendors, or the people who are building this  
3 machine, are really going to have enough time to reconfigure  
4 a thousand games.

5 So the compliance. If it was up to me, I would make a  
6 request -- and the chairman, would you approve, I would like  
7 to have a request that the coming-into-compliance part would  
8 also be extended. It takes a little time. We're going with  
9 technology here, but it doesn't turn over every night, you  
10 know. So basically, I would like you to readdress the issue  
11 on the compliance issue, on coming into it.

12 We know the rules are going to come down. We know the  
13 classification is going to come down, and we understand all  
14 of that. But sometimes you cannot make the adjustment as  
15 quickly as your final rule might say. So on behalf of the  
16 Suquamish Tribe, at least, the Tribal Gaming Commission, I'd  
17 like to have you look at the time line for coming into  
18 compliance.

19 It's rather aggressive, and I don't have a problem with  
20 that. We have to be aggressive in this field. But I'm  
21 looking at over a thousand machines or a thousand games for  
22 one vendor, and we've got 30 or 40 vendors out there that  
23 are selling the machines, and it's not possibly feasible to  
24 even think about developing these machines within six  
25 months.

1 And we develop them, and we get them to you, and that's  
2 fine. But what is the economic impact that is going to be  
3 on the tribes, by coming into compliance or not coming into  
4 compliance? The revenue that is generated by these  
5 machines, you know, have a large monetary impact on our  
6 tribe.

7 Other tribes are going to follow. Basically, some tribes  
8 will be more affected than others, but you just turn the  
9 machine over for 365 days, it takes a pretty good bite. So  
10 I would like to at least request that you look at the time  
11 line on coming into compliance.

12 MR. HOGEN: We are considering that. That is,  
13 you're not the first ones, and I'm sure you won't be the  
14 only ones this next couple of days, that bring that to our  
15 attention.

16 In terms of concern about a public hearing, we're giving  
17 very serious consideration to that. That may very well be  
18 an event that we would be scheduling sometime soon.

19 You're the first Washington tribe that we've consulted  
20 with during this stint. Maybe you can put in perspective  
21 for us what Class II and Class III equipment means to your  
22 tribe and, maybe more generally, with respect to Washington.

23 I know that there are some places, like Florida and  
24 Alabama, where Class II is the whole ball game. I know  
25 Washington tribes have these compacts that have been



1 negotiated, in a difficult process, to finally get there.

2 But maybe you could help us by explaining, as we consider  
3 economic impact and so forth, just where Class II fits with  
4 you in Washington.

5 MR. FORSMAN: Why don't you go ahead? One thing,  
6 we want to stay general on that, of course, in our comments.  
7 But I think the main thing you mentioned is we have a  
8 compact with the State of Washington, so we are allowed to  
9 have Class III games, and, for that purpose, we have a lot  
10 of Class III games in our casinos. And so that makes us --

11 You mentioned those other states. There's a big  
12 difference, and sometimes we feel like that difference is  
13 one where, as you know, the history of federal Indian policy  
14 tended to apply federal Indian policy nationwide, and it  
15 doesn't get regional.

16 And in some cases, we've been affected by, maybe,  
17 policies that are trying to address other parts of the  
18 country, whereas we have a pretty good relationship with the  
19 governor, and have with past governors; and tribes are  
20 united here and work well together, in a unified position,  
21 to negotiate, and that's helped us with getting through the  
22 compact process.

23 And that's really -- I'd like to keep our comments to  
24 that, as far as that's concerned, that that makes us  
25 different. Of course the dynamics are different because of

1 that, politically, and also what we see in our casinos.

2 I wanted to add a little bit more about -- when we talk  
3 about the compact process. When we went through the compact  
4 process, we had similar efforts made to slow down the  
5 machines and make them less marketable when we were  
6 negotiating the Class-III compact; and we just found that  
7 the State eventually just abandoned those efforts, and we  
8 signed a deal that's made great impacts to our tribes.

9 The Suquamish had before -- our original compacts didn't  
10 allow for any video terminals, and, essentially, our casino  
11 has provided jobs. It didn't provide any -- very little  
12 revenue to the tribe. And since we've signed that compact,  
13 we've built a new facility, just completed a new resort, and  
14 we just broke ground on an early-learning center for Head  
15 Start and daycare. It's about a \$3.7 million project. We  
16 have plans to build a new cultural facility. And we also  
17 have plans for a museum, and also renovation of the downtown  
18 area, the waterfront area.

19 And now we're hiring a planner to plan the development of  
20 a 36-acre parcel that we'll receive back, that was leased  
21 out. We'll receive back a waterfront parcel in 12 years.  
22 So it's been real helpful to us here in the state, and IGRA  
23 has been a big part of that. And also the fact that we've  
24 been able to negotiate well with the State of Washington,  
25 and we've also been in a strong position of promoting what

1 we do in our communities, respectively. So that's important  
2 to remember.

3 But, Jim, I'll talk a little bit about the issues of what  
4 Class II machines we do have in our mix, and also if  
5 converting those would be feasible or not. It would cause  
6 some delay and cost us revenue. And then, Michelle, I don't  
7 know if you wanted to add a little bit more about the time  
8 line with your comments.

9 MS. HANSON: I think, at some point, if we could  
10 end the public-record portion, that we have a consultation  
11 like we've had before, where we can talk a little bit more  
12 about our particular situation that, really, it's not for  
13 public consumption, we'd like to do that.

14 MR. FORSMAN: That's fine with me, if you guys are  
15 willing to do that.

16 MR. HOGEN: Sure, if you guys want to do that.

17 MR. FORSMAN: Jim might have a few more comments.

18 MR. ARMSTRONG: I was looking at the Class II  
19 classifications versus Class III. It's pretty well defined,  
20 what a Class III machine is. It's pretty well defined in  
21 your proposed final rule, what a Class II machine is.

22 I'm looking at my Class-II machines at my casino and, at  
23 this point in time, with this proposed new rule, none of  
24 these machines would be classified as Class II. We would  
25 not meet those requirements.

1           So that's why you need to look real close at these Class  
2    II classifications, so that -- the tribe, and all the  
3    tribes, I believe, want to comply. But then sometimes, some  
4    of the issues that you have in place in this new rule here,  
5    it's a little bit more stringent than what we feel is  
6    necessary, because you have a clear definition of a Class  
7    II: Looks like a bingo game, acts like a bingo game,  
8    therefore it's a bingo game.

9           But then, as Michelle said -- and we understand that you  
10   want to be able to identify that machine the minute you walk  
11   in and it's clearly defined with a bingo card and it's got a  
12   certain time line that you want to play the game. And we  
13   think that, at some point in time, it gets a little bit more  
14   stringent than necessarily as the courts say and as the  
15   laboratories say. It's a little bit farther into it.

16          So another thing that we have to look at in the future  
17   here was what will be my regulatory cost to look at these  
18   Class II machines a little bit more closer, similar to what  
19   Washington State does, and what your cost is going to be,  
20   you know, coming from the lab, all the way down the line.

21          I mean, it's an economic impact to all of us. It's not  
22   just the tribe. So I look at it in the context of what the  
23   economic impact would be. You're going to have to take a  
24   little bit closer look at these Class II.

25               MS. HANSON: I think it's important to note that

1 all the Class II machines, I think, in the United States, if  
2 your rules are enacted, will be illegal. You know, they're  
3 fine now; we think that they're -- under the Record, they're  
4 fine. The courts have told us that the ones that are in  
5 play are legal.

6 And yet, through this rulemaking, you'll make every one  
7 of the machines illegal, including the ones that we have in  
8 our casinos. That means that the Tribal Gaming Commission  
9 as well is going to have to look at every new game that any  
10 manufacturer brings. That's going to bring extra regulatory  
11 cost.

12 We're going to have to make sure that the machines that  
13 are on the floor are taken off the floor. We don't know  
14 what kind of resistance they might get from the operations,  
15 because Class II is important here too. So that's -- that  
16 perhaps will lead to enforcement costs.

17 I mean, there's a lot of costs that are going to be  
18 following any kind of rulemaking that you do. And I think  
19 if it's one thing that you come away with, from a legal  
20 perspective, the Suquamish Tribe thinks that this rulemaking  
21 is unnecessary. It's already there. It already exists in  
22 the law. It already exists through the court opinions, and  
23 you don't need to make the change. So you're creating a lot  
24 of economic impact that's unnecessary.

25 MS. COLEMAN: Can you tell me what kind of games

1       you have? How are they different from the proposed  
2       regulations?

3               MR. ARMSTRONG: Well, first off, the proposed  
4       regulations require that you have a two-inch marking of some  
5       sort that says: This is a Class-II machine. And then you  
6       have the 50-percent or 51-percent coverage of the video  
7       screen. So if you at look a normal video screen, you're  
8       looking at just a -- what did we call that the other day? A  
9       visual. And some of them only have a little square, about  
10      like that (indicating), but the new rule says "at least 50  
11      percent."

12              MS. COLEMAN: Well, do you have a machine that the  
13      top part is the bingo game and the bottom part is the--

14              MR. ARMSTRONG: The reel.

15              MS. COLEMAN: The reel.

16              MR. ARMSTRONG: So we have a little five-by-five  
17      square card, about like this (indicating). It's a center  
18      screen -- or center of the top. And down below, it has the  
19      reels, so you can reach up there and change it.

20              MS. COLEMAN: But the entire top half is the bingo  
21      games?

22              MR. ARMSTRONG: No.

23              MR. GROSS: I think the question is: Is there one  
24      video screen, or two?

25              MR. ARMSTRONG: There's one screen.

1 MS. COLEMAN: There's one screen? There isn't a  
2 screen on top and a screen on the bottom?

3 MS. HANSON: No. It's one screen. We have the  
4 Cadillac Jack game. We have the MegaMania game. Those are  
5 the two.

6 MS. COLEMAN: So you have one card?

7 MR. ARMSTRONG: And you can change that card out  
8 at any time that you want.

9 MS. COLEMAN: And it's on the same screen as the  
10 spinning reels?

11 MR. ARMSTRONG: Yes.

12 MS. COLEMAN: I see.

13 MR. ARMSTRONG: And then the requirement calls for  
14 50 percent of the screen must have a bingo card. And if I  
15 interpret it wrong, then excuse me, but it says "50  
16 percent."

17 MS. COLEMAN: It says "50 percent of the bingo  
18 game."

19 MS. HANSON: Part of your rules say "50 percent of  
20 the game." There's another part that talked about being the  
21 card, and we're not sure which one it is.

22 MS. COLEMAN: Really? If you can identify that  
23 for us, we'll obviously need to make it consistent, no  
24 matter what.

25 MR. ARMSTRONG: And basically, I have not seen

1       this machine at all, but if you have multiple cards on the  
2       machine, then you have to be able to display these cards,  
3       because the player has to have the ability to see these  
4       cards.

5       And say, in our games, we have one -- I don't know what  
6       other regions do. Or, you know, maybe they have a five-card  
7       bingo game out there, and that means every one of those five  
8       cards have got to be displayed to that person.

9       So now you're taking and getting that screen so small  
10      that it's almost -- you've got to have one or the other.  
11      You say you can play the bingo game or you can do the reel.  
12      As long as that bingo card is displayed, you just can't have  
13      the reel game.

14      But I think our machines here in Washington State have  
15      that displayed, and it's readily available and identifiable,  
16      by the patron, that this is a bingo game. I don't think  
17      that two-inch sign that says it's a Class II bingo machine  
18      needs to be there, because it has a bingo card.

19               MR. HOGEN: Well, it would be nice if we could  
20      roll the clock back and do it right to begin with. You  
21      know, a problem that tribes have today is, if they're going  
22      to invest in Class II equipment, there isn't any bright line  
23      that says, "If you do it this way, nobody will come along  
24      and second-guess this."

25      We'd like to put in place a set of workable rules whereby



1 tribes can have fast, fun, profitable games, but you would  
2 be on solid ground when you buy that equipment and you won't  
3 have to revisit it.

4 In terms of the court decisions, court decisions we're  
5 familiar with, we tried to build on. We focused primarily  
6 on the MegaMania bingo game, which was a game that you had  
7 to have 12 players to play before you could start. You only  
8 looked at bingo cards, and it took a couple of minutes to  
9 play the game.

10 The other line of cases had to do with pull-tab  
11 dispensers that showed slot-machine reels. It just told the  
12 player whether you won or lost. It didn't have anything to  
13 do with the pull-tab game.

14 Then, of course, those concepts got married, and you had  
15 a bingo game that the machine aided the player to play, and  
16 you found out whether you won or lost, in part, by seeing  
17 what the reels depicted.

18 And those games today, none of which I am aware have been  
19 addressed by courts, are just night-and-day different from  
20 those earlier pioneer models. And we're trying to  
21 accommodate the fast, fun game but maintain that distinction  
22 that Congress insisted, in IGRA, exist: that there be a  
23 recognizable difference between Class II and Class III and  
24 that the games not be electronic facsimiles of games of  
25 chance. Otherwise, of course, they no longer fall under the

1 Class II category.

2 So we are looking seriously at these requirements: Half  
3 the screen being bingo or half the display space being bingo  
4 and timing and so forth. We want to be realistic. We don't  
5 want to turn the clock back to the Stone Age. We don't want  
6 to put tribes out of business.

7 We've written advisory opinions, and some of the  
8 advisory-opinion machines would become obsolete, would  
9 require modification, under the new regulations. The  
10 problem we have is most of the machines that are on the  
11 floor in many places today were built to comply with our  
12 advisory opinion, but they're not being played that way.

13 Instead of requiring player participation, daubing  
14 after numbers are called, the player just pushes the button  
15 once and the game plays itself. That, we think -- I think,  
16 becomes a facsimile of a game of chance. I think you have  
17 to have that player involvement. How much time you should  
18 permit for that, of course, is debatable. That's where  
19 we're trying to go.

20 But we have under active consideration these concerns  
21 that you've identified. We're going to look, before we  
22 leap, at them. Before any final publishing of any  
23 regulations, we'll sure take these concerns into  
24 consideration.

25 MR. ARMSTRONG: Okay. Basically, I would just

1 like to look at the whole process itself. I mean, we're  
2 more than willing to work with people. But I think we can  
3 also look at the classification of these machines right now,  
4 but there's going to be other rules coming down the pike,  
5 there's going to be other changes coming down the pike, so  
6 let's take this one as a model and try to streamline it  
7 where it's workable for both your agency and my agency.

8 And then we need to address each and every rule in the  
9 future in the same manner so that we have a working process  
10 at all times, rather than having to come in and my people  
11 attacking me because I'm too stringent, or I've got to come  
12 back and I've got to hammer you, Phil. And you've been  
13 there before.

14 But I'm saying if we just have a working process, where  
15 we have everything on a roll, so to speak, so we can come to  
16 a conclusion, come to finality on it and just move on. And  
17 I don't think we have enough time to dilly-dally on issues  
18 and things; that we need to just face these issues head-on,  
19 address them, and correct them. And all consideration for  
20 all tribes should be taken, because it's very important,  
21 this class recertification.

22 MS. HANSON: And I'd like to put on the record  
23 that Suquamish disagrees with the comment you just made.  
24 You were saying that IGRA requires a distinguishable  
25 difference on the floor, it seems, between Class II and

1 Class III, and I don't know IGRA requires that. They just  
2 set up classifications for regulatory purposes and who would  
3 be regulating it: Class I, Class II, and Class III, as you  
4 know. But I don't think it translates into a visible  
5 difference on the floor. So I'd just like to put that in  
6 the record.

7 MR. HOGEN: Okay. Thank you.

8 MR. FORSMAN: I'd like to wrap up so we have a  
9 couple of minutes, here at the end, to speak off the record.  
10 Just like I mentioned before, that IGRA has been a great  
11 tool for the Suquamish Tribe; as you know, many tribes.

12 We've really had very little, or any, revenue for our  
13 tribal government that was discretionary. Most of it was  
14 from the federal government and it had strings and all that.  
15 Since then, we've been able to buy back a lot of land. We  
16 lost over two-thirds of our 8,000-acre reservation through  
17 the Allotment Act.

18 We're outnumbered, about 10 to 1, by nonNatives on our  
19 reservation. We've been able to make some very nice  
20 strategic purchases for our future; been able to build  
21 housing for elders; we've been able to provide healthcare  
22 and all these things the federal government hasn't been able  
23 to do for us in meeting their treaty obligations.

24 So we'd just like to ask the NIGC to remember their  
25 mission, and I think what Jim said earlier about trying to

1 reach some finality on this and having an open process so we  
2 can all continue to provide for our people.

3 And I think that, on some levels, that the NIGC needs to  
4 maintain its independence politically and think about its  
5 mission according to how IGRA set it up. And we feel that  
6 Class II and Class III are fairly well defined and we don't  
7 need any drastic changes in how the games are defined.

8 That's the end of my comments unless anyone else has any  
9 comment to close with.

10 MR. HOGEN: Okay. Thank you. We'll bring to  
11 conclusion this consultation session. Thank you.

12  
13 (The consultation with the Suquamish Indian  
14 Tribe concluded at 11:00 a.m.)  
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## A P P E A R A N C E S

For the Metlakatla Indian Community  
P.O. Box 008  
Metlakatla, Alaska 99926

Judith Eaton, Executive Tribal Secretary  
Geoffrey Strommer, Tribal Attorney  
Sean Enright, Tribal Council  
Joseph Webster, Tribal Attorney

(The consultation with the Metlakatla Indian  
Community began at 11:02 a.m.)

1 MR. HOGEN: I'm Phil Hogen, chairman of the  
2 National Indian Gaming Commission. Chuck Choney is the  
3 other member of the Commission right now. And we have our  
4 acting general counsel, Penny Coleman; from her office,  
5 attorney Michael Gross and John Hay, down there.

6 And from our Portland regional office, Randy Sitton, who  
7 is our regional director. Rayanne Morris is out of that  
8 office, but in the Bellingham office. Natalie Hemlock is  
9 with our D.C. office and is an assistant to the Commission.  
10 We have Alan Phillips, from our Sacramento office, here.

11 We brought a big team because all of us are playing a  
12 role with respect to how we drafted these things, and we  
13 want to understand what the tribal perspectives are.

14 So having said that, I guess I should also say we're  
15 convened here on the 24th of July, in Tacoma. And we're  
16 consulting with respect to the proposed regulations NIGC  
17 proposed in the Federal Register on the 25th of May.

18 So would you please introduce yourselves on the record  
19 here so that our reporter will know who is doing the  
20 talking, and then we'd very much like to hear your comments  
21 regarding our proposals.

22 MS. EATON: My name is Judith Eaton. I'm an  
23 elected official for the tribe, executive secretary, and  
24 also the overseer for gaming.

25 MR. ENRIGHT: Sean Enright, of the tribal council.

1 MR. STROMMER: I'm Geoff Strommer; Hobbs, Strauss,  
2 Dean & Walker, working out of the Portland office.

3 MR. WEBSTER: Joe Webster, with Hobbs, Strauss,  
4 Dean & Walker, in the D.C. office.

5 MR. HOGEN: Well, we'd love to hear your thoughts  
6 and comments regarding our proposals.

7 MS. EATON: Well, first of all, I'd like to  
8 introduce our community and our bingo facility to you all.  
9 I don't know, other than Rayanne, who's come to visit our  
10 island. We're a small island, and we have 26 employees,  
11 which we've never had jobs for before. We have electronic  
12 games and the bingo games.

13 This has brought jobs to the community, and we feel that  
14 this is very important. That's why we're here on behalf of  
15 the council. And they want us to stress that the revenue  
16 that we make on our gaming is very important to our  
17 community, and the revenues.

18 MR. HOGEN: Thank you. Other comments with  
19 respect to the proposals we've made and how that might  
20 impact on the activity?

21 MS. EATON: The comments that we have really has  
22 to do with the electronic aspects of the gaming. We feel  
23 with some of the comments -- or the rules and regulations  
24 that you want to be implemented would definitely be hurtful  
25 to our bingo.



1 MR. HOGEN: And do you have thoughts on just what  
2 we say in our regulations that would hurt the activities  
3 there?

4 MS. EATON: Well, we feel like you're jeopardizing  
5 our bingo, to enhance the Class III. We're just wanting to  
6 protect our assets.

7 MR. HOGEN: Okay. I guess we haven't thought  
8 about it that way. We're not trying to, I don't think,  
9 consciously enhance Class III. What we're trying to do is  
10 clarify that there is a distinction between Class II and  
11 Class III and what that distinction is, so that when tribes  
12 like yours do Class-II gaming and are going to invest in  
13 equipment and so forth, you'll know that you're on solid  
14 ground, that somebody won't come along and second-guess the  
15 choice of equipment that you've made. Rather, it would be  
16 certified as viable in this situation.

17 And we want to do that carefully. We want to do it  
18 right. We don't want to put tribes out of the bingo  
19 business, so to speak. But we think Congress intended that  
20 there be a difference, and we're just trying to draw that  
21 line so that it can be well understood.

22 MS. EATON: Well, our revenue from Class-II gaming  
23 has really helped a lot of our other departments that aren't  
24 budgeted -- don't have the budget to carry them through. We  
25 support our police department, our senior-citizen programs,

1 education. This is so important to us that we do want to  
2 protect it.

3 We're the only reserve in the state of Alaska. We're on  
4 a little island. You know, we don't -- I don't know. We  
5 don't have effect with other communities that much. But for  
6 our community to be self-sufficient, all our revenue is from  
7 -- a small portion is just starting to come -- you know,  
8 we're getting visitors to the island because of our bingo,  
9 which is nice, because we're bringing new monies in instead  
10 of just from the community itself.

11 But it has, you know -- like I said, our forestry, our  
12 timber -- we shut down a mill that employed 300 people. So  
13 we've had, you know, people leaving the island because  
14 there's no jobs. Our fishing industry had failed because of  
15 the prices. It's coming back now, but it's slowly but  
16 surely coming back. But still, this is our main source of  
17 revenue right now.

18 MR. HOGEN: What is the tribal membership?

19 MS. EATON: The tribal membership is 2154; 2,154.

20 MR. HOGEN: And do most of those members live on  
21 your reserve, on your island?

22 MS. EATON: No. 1,491 on the island.

23 MS. COLEMAN: How big is your facility?

24 MS. EATON: Our facility, we have -- in square  
25 footage, or in machinery?

1 MS. COLEMAN: Yeah, machinery. And do you have  
2 live-session bingo and just -- is it a great big building,  
3 or is it a little tiny one, or...?

4 MS. EATON: Compared to Muckleshoot, it's really  
5 small. It's probably, like, the garage. But we have 30  
6 electronic bingo machines. We have 100 tables.

7 MS. MORRIS: They're the largest, actually, of the  
8 Alaska tribes.

9 MS. EATON: In the southeast, for bingo, yeah,  
10 other than Anchorage. They have several bingo halls up  
11 there that are larger than we are, I believe, with the  
12 tables.

13 MS. MORRIS: The ones under our realm, Number 3.

14 MS. EATON: Yeah, we're the largest.

15 MS. COLEMAN: So are you open every day?

16 MS. EATON: Five days a week.

17 MS. COLEMAN: Five days a week?

18 MS. EATON: Mm-hm. 1:00 to 1:00; 1:00 p.m. to  
19 1:00 a.m.

20 MS. COLEMAN: And the table games are what kind of  
21 games, or like --

22 MS. EATON: Regular bingo games.

23 MS. COLEMAN: Oh, bingo.

24 MS. EATON: Yeah, you play it on the line --  
25 line-on sheets, and then there are specials.

1 MR. HOGEN: Are there some days when the sun is  
2 shining when you open up and the sun is still shining when  
3 you close down?

4 MS. EATON: Yes, sir.

5 MR. HOGEN: You said 100 tables.

6 MS. EATON: Mm-hm.

7 MR. HOGEN: Are you talking about bingo seats, or  
8 table games?

9 MS. EATON: Table.

10 MS. MORRIS: Bingo seats.

11 MS. EATON: The table is like this here  
12 (indicating to conference-room tables); tables.

13 MS. MORRIS: They don't have table games.

14 MR. HOGEN: Okay. I did not think you did, but  
15 how many players sit at a table?

16 MS. EATON: It depends. If you use both sides,  
17 you can seat 18 (sic) -- eight players -- you know four on  
18 one side and four on the other. It's just like a dinner  
19 table, like, you know.

20 MR. HOGEN: Typically, how large is the attendance  
21 playing the live-session bingo?

22 MS. EATON: From 42 on up, 42 people playing.

23 MS. COLEMAN: How many people live on the island?

24 MS. EATON: About 2,000. 15- to 2,000.

25 MS. COLEMAN: So mainly, your customers are from

1 the island, but you're starting to get --

2 MS. EATON: The majority, yes.

3 MS. COLEMAN: -- starting to bring in some new  
4 customers.

5 MS. EATON: Yes. Especially in the summertime,  
6 with the tourism. Plus, we have a new boat that comes over  
7 from Ketchikan. It's called "The Thriller," "The Alaska  
8 Thriller." Yeah. That brings -- because they can come in  
9 and go right back. But we also have the motor vessel  
10 Lituya, Alaska Marine Highway, that has two round trips,  
11 five days a week.

12 MR. CHONEY: Could you tell us specifically how  
13 these changes will affect your revenue?

14 MS. EATON: Well, if it has to do with the  
15 machines, which this here particularly addressed, your  
16 changes and rules, you know, that's where a lot of our  
17 economy -- because the people are thinking that we're kind  
18 of like a mini Vegas, you know. They like to be able to  
19 have that game of chance with the other, lower states,  
20 because we're connected with them.

21 They have a bingo card on there. They can change the  
22 card. We like to be able to have that capacity of changing  
23 their card and playing.

24 MR. CHONEY: So you're talking about Class III.

25 MS. EATON: II.

1 MR. CHONEY: Well, you mentioned your --

2 MS. EATON: Electronic bingo card.

3 MR. CHONEY: -- you play this like a game of  
4 chance.

5 MR. WEBSTER: Just to clarify, bingo is a game of  
6 chance. I think what she's saying is the patrons like to  
7 come there and have the electronics, have the entertainment  
8 of the games, but they also do interact with the technical  
9 aid. They do like to change the bingo card.

10 But it's the speed of play, it's the bells and whistles  
11 that make it attractive, especially at their remote  
12 location; and that, under these regulations, if the games  
13 are dramatically slowed down, made less interesting to the  
14 players, nobody is going to come to this remote island to  
15 play this game.

16 So I think the concern is it would be devastating to  
17 their revenues.

18 MR. SITTON: So your machines are a linked system?

19 MS. EATON: Yes.

20 MR. SITTON: And who are you contracted with? Is  
21 it Rocket, or who? Rocket Bingo, or what kind of game is  
22 it?

23 MS. EATON: Bally's.

24 MR. SITTON: Is it Bally's? Okay.

25 MR. STROMMER: It might be useful just to give

1       them a flavor of the difference in revenue since you've had  
2       the machines, just so that you can appreciate the  
3       significance of the revenues being there and the revenues  
4       without the machines present.

5               MS. EATON: We used to only have bingo two nights  
6       a week: Thursdays and Saturdays. Like I said, it was just,  
7       you know -- and that bingo, we only brought in, well, maybe  
8       2,000 an evening. That's 4,000 a week. Now we're bringing  
9       in over 10- to 20,000 a week.

10              MR. STROMMER: Maybe if you want to explain a  
11       little bit more -- you talked about some of the problems  
12       with the economy, but in terms of, like, what the employment  
13       is right now and the unmet needs the community has.

14              MS. EATON: Well, I told you about our big  
15       industry; that we've lost, you know, 300 jobs with the  
16       forest -- with the mill shut down, and 36 with the cannery.  
17       So that's a lot of jobs that we lost, and we're just  
18       bringing back a little bit. We went from six employees to  
19       26 now. So it has helped bring revenue into the household  
20       and stuff and giving people jobs, you know. And it has  
21       really helped a lot, like I said, the other departments that  
22       don't have the budget.

23              We're in a catch-22, to tell you the truth. Because of  
24       our reservation status -- we're the only reserve in the  
25       state of Alaska. We go to the State House, you know,

1 looking for State funding. They said, "No, you're a federal  
2 reserve. Get your money from the federal." So we go to the  
3 federal, and they said, "Well, we're giving money to the  
4 State." So we're always trying to find ways to -- you know,  
5 grants, whatever. But they're -- we always get in a  
6 catch-22.

7 And the bingo funds, they're not -- we can do what we  
8 need to do with them, which is really nice. It's, like I  
9 said, with the senior programs, with the police department  
10 that fall short; the health and education. We have a health  
11 and education permanent fund that helps for medical that's  
12 beyond our expertise on the island and for education, for  
13 higher education; help our kids.

14 MR. HOGEN: Well, we are learning, through our  
15 consultations, that there are lots of unique situations out  
16 there. Certainly, yours is one of the more unique in the  
17 fact that you're the only reserve in such a big,  
18 geographically large state, and you have an unusual market  
19 base there; not much population right there. But you're  
20 bringing some people in.

21 MS. EATON: We're in the process -- I don't know,  
22 and maybe you guys are aware that we're building a 14.6-mile  
23 road that will connect us closer to Ketchikan. So that will  
24 bring more of the population over and bring more customers  
25 over on the ferry boat. It will be a lot closer to Prince



1 Rupert also.

2 MR. CHONEY: Is your reserve the whole island?

3 MS. EATON: Mm-hm.

4 MR. CHONEY: Then how far are you from Ketchikan?

5 MS. EATON: 14, 15 miles.

6 MR. CHONEY: 15 miles?

7 MS. EATON: Mm-hm.

8 MR. STROMMER: Not from Metlakatla, but from where  
9 the road is coming out, it's how far across?

10 MS. EATON: Oh, it's just a 15-minute boat ride.

11 MR. STROMMER: Probably about four or five miles.

12 MS. EATON: Instead of an hour and 40 minutes,  
13 we'll be 15 minutes, one way.

14 MR. STROMMER: And there will be ferry service,  
15 then, between Ketchikan and the Annette Bay part of the  
16 island.

17 MS. EATON: Mm-hm. And that should be done in  
18 2009.

19 MR. HOGEN: This doesn't have anything to do with  
20 the "Bridge to Nowhere," does it?

21 MS. EATON: No. Absolutely not.

22 MR. STROMMER: I think, just to clarify -- it may  
23 be obvious, but they have tried, over the years, to compact  
24 with the State and have not been successful in getting the  
25 State of Alaska to be interested in compacting. So for

1       them, Class II is all they have. They don't have the  
2       Class-III option to go to.

3               MR. CHONEY: What reason are they giving you for  
4       not wanting to negotiate?

5               MS. EATON: I -- I really can't answer that.

6               MR. HOGEN: Joe, perhaps you know. What position  
7       does the State of Alaska take with respect to their scope of  
8       gaming? What's legal?

9               MR. WEBSTER: I think, like some other states,  
10      they take the position that it's a narrower scope than we  
11      obviously think the case law and the statute would support.  
12      So, you know, I don't want to -- who knows what might happen  
13      down the road, but at least for all these years -- and  
14      Metlakatla has been doing gaming for quite a few years.  
15      It's not new in its approach to the State. They've done it  
16      numerous times over the years, so it's -- but at this point,  
17      because they are, you know, such a small community and sort  
18      of isolated, I don't think they get the attention from the  
19      State that maybe some of the closer tribes to Anchorage  
20      would.

21              MR. GROSS: Did you say how many bingo machines,  
22      electronic machines, you had and I missed it?

23              MS. EATON: 30, with 10 more on the way.

24              MR. HOGEN: And are these Bally machines connected  
25      to anyplace else, or they're all --

1 MS. EATON: Yeah. They play -- their main hub is  
2 in Oklahoma, and we play throughout -- they play against  
3 other players on the same --

4 MR. HOGEN: So you can be playing for a big prize  
5 that would be generated not just by the dollars that are  
6 collected there?

7 MS. EATON: Of the community, yes.

8 MR. HOGEN: All right. Did anybody ever win any  
9 really big prizes there?

10 MS. EATON: Yeah. A local girl won 27,000.

11 MR. HOGEN: I'll bet there was a lot of excitement  
12 when that happened.

13 MS. EATON: There was. There was. We were really  
14 happy for her, because she was a cancer patient.

15 MS. COLEMAN: Are these the SDG machines that are  
16 subject to the opinion, or are they something else?

17 MR. WEBER: They're the same SDG machines that are  
18 in play at other -- by the tribes, so it's the -- you know,  
19 the Mystery makeup.

20 MR. HOGEN: And I expect those can be configured  
21 with respect to how many times you touch to play?

22 MR. WEBER: Sure. I mean, absolutely.

23 MR. HOGEN: Do you know how many times you touch  
24 to play those that are there?

25 MR. WEBER: I believe that they have the autodaub

1 feature on their game, which is something, I know, that  
2 there's a difference of opinion on in terms of what our  
3 views and others' are, in terms of what is a permissible  
4 function for an aid device.

5 But I know one of the concerns that the community has is  
6 that the regulations as drafted right now, no game that's  
7 out there, whatever, would satisfy the regulations. And, in  
8 fact, I guess it's our view that the game that's described  
9 in the regulations is a form of bingo that's never been  
10 played anywhere by anyone. It would essentially require the  
11 creation of a new type of bingo game to satisfy the  
12 regulations.

13 We don't think that's what Congress had in mind in terms  
14 of making it consistent with the Cavanaugh case, recognizing  
15 the tribes have a broad right, inherent right, to gaming;  
16 and Class II is not supposed to be narrowly construed, but  
17 it's supposed to be broadly construed to recognize that  
18 right.

19 MR. HOGEN: What are the characteristics that you  
20 would point to in the proposed regulations that would make  
21 this unique from anything that's ever been played?

22 MR. WEBER: Well, I think, for example, the  
23 limitation on the prize values: specifying that the  
24 game-winning prize has to have a certain arbitrary value;  
25 requiring, you know, in the case of ante-up games that, as

1 you go through the game, if everybody drops out, you have to  
2 refund the money to all players, apparently, even if the  
3 players have won interim prizes along the way; that you  
4 have, you know, these certain time periods that are built  
5 in, in terms of how long, you know, the ball release has to  
6 take; that you have to release more than enough balls to get  
7 to the game-winning prize, even though the MegaMania case  
8 says you release fixed sets that could have been more than  
9 the number to get the game-winning pattern.

10 A lot of these are requirements that are -- you know,  
11 even the MegaMania game would not come close to satisfying  
12 these regulations. So, you know, the screen-display  
13 requirements -- it seems as though the Commission, for at  
14 least a couple years, took the view that the bingo display  
15 had to be clearly visible. And through all the draft  
16 regulations, that seemed to have a certain meaning.

17 And then, between the fifth draft and the final  
18 regulations, all of a sudden it went from being a 2-by-2  
19 card to being half the screen. That, to us, doesn't seem  
20 like it's, you know, consistent with the Commission's own  
21 rationale in terms of the "bingo" has to be clearly visible.  
22 Not only does it have to be clearly visible, but now it  
23 arbitrarily has to be a certain percentage of the screen.

24 So those are some of the -- and the Committee will be  
25 certainly submitting written documents as well. But those

1 are some of the concerns.

2 I think, you know, the end result, though, is that if  
3 these were to be put in place as drafted, you end up with a  
4 game that would not perform anywhere near as well as what we  
5 think is permitted by the statute and would dramatically  
6 reduce the revenue, and frankly, create games that may not  
7 even be commercially viable.

8 So we hope the Commission will look at that as it goes  
9 back and takes a look at comments; that the end result --  
10 this process is a failure if the end result is a game that  
11 nobody wants to play.

12 MR. HOGEN: I would agree with that. That's what  
13 happens when we can't get done what we set out to do. In  
14 terms of, wherein MegaMania would fail to comport with the  
15 proposal, what would you point to in that connection?

16 MS. EATON: We don't do MegaMania.

17 MR. WEBER: No. But I guess the question is -- as  
18 to that particular game, one is that the MegaMania, the ball  
19 releases were in sets of three. So in particular, with the  
20 second release, you could get the game-winning pattern, and  
21 the release of balls would be more than enough to get to the  
22 game-winning pattern.

23 Your regulations are saying you always have to stop when  
24 you achieve the game-winning pattern. We're not sure of the  
25 basis for that, and certainly that's not how MegaMania is

1       played.

2           There's also -- in MegaMania, the game was the -- because  
3       it was an ante-up game, you had players that would, at each  
4       level, potentially drop out, so you could be left with one  
5       player at the end.

6           In the regulations, as you drafted, that would be  
7       prohibited. You could not have a situation where you got  
8       down to one player; and, to me, I think that ignores the  
9       fact that you look at the game as a whole and say: "Did you  
10      have players competing against each other?" If everybody  
11      drops out and you just have one left, you're just looking --  
12      you need to look at the game as a whole. So again, you  
13      could have one player at the end of MegaMania, and you  
14      couldn't do it in the regulations.

15          There's also this requirement where, if you get to the  
16      last player -- and I don't have the language in front of me,  
17      but essentially, you have to refund the money to all of the  
18      players, which, there's nothing like that in MegaMania. It  
19      would make the game -- it would just be an absurd result.  
20      You'd have people who play through 10 rounds of bingo, win  
21      interim prizes, and you get down to one player, and then you  
22      have to refund everybody's money. It doesn't seem like a  
23      logical way to describe a bingo game.

24           MR. HOGEN: Well, you've had quite a little  
25      experience looking at these games. Do you think that would

1 ever happen?

2 MR. WEBER: In an ante-up game, that you'd get  
3 down to one player?

4 MR. HOGEN: No. Having to refund.

5 MR. WEBER: In the regulations, absolutely. It  
6 almost sets it up that, if you have an ante-up game, it  
7 looks like it could occur commonly, because the triggering  
8 event is: You may start a game -- let's say you're starting  
9 with eight players. Depending on how many rounds you go,  
10 you're always going to have players who are going to drop  
11 out, and it's very easy to envision a situation where you  
12 get down to one player. And under the regs as drafted --  
13 and again, I don't have the language in front of me -- once  
14 you get down to that last player, it's almost automatic that  
15 you have to refund the money to all the players.

16 So yeah, I think it would happen. I'm not sure how  
17 you -- I'm not sure how you could do a game if you had that  
18 kind of rule. But you probably can do an ante-up game with  
19 that kind of requirement.

20 MR. HOGEN: Do you know anybody that's advancing  
21 an ante-up game presently?

22 MR. WEBER: I know that there are vendors that are  
23 still looking at ante-up and are considering how. Because  
24 that is a game format that was specifically approved by the  
25 Ninth and Tenth Circuits. They're still looking at that in



1 terms of how that might be developed into a game that would  
2 be viable today.

3 So I think, yeah, it's certainly not something that  
4 anyone has given up on. But I think part of it is just the  
5 uncertainty that has been created by this process. I think  
6 everybody is kind of stepping back and waiting to see how  
7 this plays out before putting a lot of money into developing  
8 new games.

9 MR. HOGEN: That's certainly our objective: to  
10 try to come up with some clarity so that tribes can be on  
11 solid ground when they are going to invest significant sums  
12 of their money in gaming equipment, that they know that they  
13 aren't going to have that rug jerked out from under them.

14 So hopefully, we'll come up with a concept that will  
15 permit some fast, fun, profitable games. And we'll listen  
16 carefully to those concerns that are brought to our  
17 attention and suggest that maybe the way we've got it  
18 configured won't quite get us there.

19 MR. WEBER: I appreciate that, Mr. Chairman.

20 MS. EATON: And that was the purpose of our visit:  
21 to relay our council's wishes that, you know, these  
22 regulations be really looked at, because it would be  
23 harmful. If they were to implement the proposed  
24 regulations, it would be harmful for our gaming facility.

25 MR. HOGEN: Well, we thank you very much for

1 coming all this way to share your views with us. We'll take  
2 them into consideration as we try to perfect this process.

3 MS. EATON: And we extend the invitation to our  
4 community, to visit our facility. Rayanne's been there, but  
5 to come see where we live and how we're governed and all  
6 that.

7 MR. HOGEN: When we discuss that, we have lots of  
8 volunteers that want to go. Thank you so much.

9  
10 (The consultation with the Metlakatla Indian  
11 Community concluded at 11:29 a.m.)  
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## A P P E A R A N C E S

For the Confederated Tribes of Warm Springs  
P.O. Box 1590  
Warm Springs, Oregon 97761

Andrew Hofstetter, Gaming Commission Chairman  
Orthelia Patt, Gaming Commission Secretary  
Suzanne Moody, Gaming Commission member

(The consultation with the Confederated  
Tribes of Warm Springs began at 11:49 a.m.)

1 MR. HOGEN: Welcome. I'm Phil Hogen, chairman of  
2 the National Indian Gaming Commission. Chuck Choney is the  
3 other member of the Commission here with me. And we have  
4 staff. Michael Gross and John Hay are attorneys with the  
5 Office of General Counsel. Randy Sitton, who I think you  
6 know, is our regional director from Portland. And from his  
7 office, we have Mark Phillips over here. And from  
8 Sacramento, from our Sacramento field office, Alan Phillips  
9 is here. And Natalie Hemlock is the assistant to the  
10 Commission assisting with this.

11 Now, we're gathered here in Tacoma, on July 24th, 2006,  
12 to consult with respect to the proposed regulations that  
13 NIGC published in the Federal Register on the 25th of May,  
14 that relate to classification standards and definitions that  
15 are used in determining what gambling equipment tribes can  
16 use without a compact, under Class II, and what equipment  
17 can be Class III.

18 And we're very eager to hear what Warm Springs Tribe has  
19 to share with us in connection with your thoughts as far as  
20 our proposal is concerned. So would you please introduce  
21 yourselves and tell us how you're affiliated with the tribe  
22 and its gaming, and then we'd love to hear your comments.

23 MR. HOFSTETTER: My name is Andrew Hofstetter,  
24 chairman of the Warm Springs Gaming Commission, tribal  
25 member, with the Confederated Tribes of Warm Springs.

1 MS. PATT: Orthelia Patt, secretary of the Warm  
2 Springs Gaming Commission. I'm a member of the Confederated  
3 Tribes of Warm Springs.

4 MS. MOODY: Suzanne Moody, commissioner of the  
5 Confederated Tribes of Warm Springs, tribe member.

6 MR. HOFSTETTER: Also, we have two additional  
7 gaming commissioners that can't be with us today. William  
8 Fuentes and Michele Stacona are part of the commission as  
9 well.

10 First, we would like to thank NIGC for allowing us this  
11 opportunity to be heard. We participate in all of the  
12 consultations. We try to stay very active whenever there's  
13 an opportunity to be heard or have discussions on issues of  
14 concern. So we'd like to thank you, and we will continue to  
15 participate in future discussions and consultations.

16 What I would like to do is I would like to read our  
17 letter, our position on the Class II standards, and I'd like  
18 to go ahead and hand these to you. Those are copies for  
19 NIGC.

20 MR. HOGEN: Let the record show that the original  
21 has been delivered to me, and this will be made part of the  
22 record, and the recorder has a copy.

23 MR. HOFSTETTER: We need --

24 MS. PATT: We need to sign the letter.

25 MR. HOFSTETTER: We apologize.

1 (The letter is signed.)

2 MR. HOGEN: Thank you.

3 MR. HOFSTETTER: "Dear Chairman Hogen and Vice  
4 Chairman Choney, this letter represents the Warm Springs  
5 Gaming Commission comments on the NIGC's proposed rules for  
6 Class II classification standards and definitions."

7 I just want to note, before I get into the letter, this  
8 is regarding the Warm Springs Gaming Commission's position  
9 on Class-II classification standards and electromechanical  
10 facsimile definitions.

11 "The Confederated Tribes of Warm Springs remains  
12 concerned with the manner in which the NIGC has developed  
13 these regulations. The current rulemaking process lacks  
14 meaningful consultation with the Indian tribes.  
15 Notwithstanding the fact that the NIGC assembled a Tribal  
16 Advisory Committee, TAC, to participate in the process, the  
17 committee was not invited to participate in the drafting of  
18 the proposed regulations, and little, if any, of the TAC's  
19 input has been incorporated into the NIGC's proposed rules.  
20 Equally troubling, the tribal comments submitted to NIGC  
21 during the drafting process were never made public by the  
22 NIGC, and it is unclear if any of the comments were  
23 considered during the drafting process.

24 "The NIGC must comply with its own consultation policy  
25 and engage in meaningful government-to-government

1 negotiations with tribes. The NIGC should be required to  
2 hold public hearings on the regulations, with comments and  
3 submissions recorded as part of the administrative record.

4 "Our position on this issue is for NIGC to refrain from  
5 placing arbitrary restraints on Class-II gaming. Although  
6 we have no strong objection to removing the term 'house  
7 banked' from the definition of a 'game similar to bingo,' we  
8 oppose the proposed definition of 'electromechanical  
9 facsimile.' We disagree with the NIGC's claim that bingo,  
10 lotto, and other games similar to bingo are facsimiles when  
11 played in an electronic medium. The current definition is  
12 clear on its face: So long as the electronic format  
13 broadens participation among players and is not played  
14 against the machines, such games are not facsimiles. Please  
15 delete the proposed redefinition. (See proposed Rule at  
16 502.8.)

17 "The classification standards are arbitrary and contrary  
18 to the established case law. Please delete the proposed  
19 restrictions on the game display, ball draw, daubing, prize  
20 amounts, and player interaction. These new requirements,  
21 rather than clarifying the existing regulations, appear to  
22 repudiate most variants of bingo, slows the play of those  
23 that remain, and prevents any meaningful electronic play of  
24 pull tabs.

25 "For example, without any statutory or case-law

1 authority, the regulations impose additional restrictions on  
2 pull tabs. Under the proposal, the player terminal may  
3 neither accumulate credits nor award cash. The player must  
4 therefore redeem all pull-tab winnings through a clerk or  
5 kiosk and cannot merely transfer credit between the  
6 machines. This restriction greatly hinders player  
7 flexibility and the use of current cashless technology.

8 "We also object to the redefinition of the statutory term  
9 'game of bingo.' In enacting IGRA, Congress places only  
10 three requirements on a game of bingo. Notably, the federal  
11 courts have continuously held that these three requirements  
12 constitute the sole legal requirements for a game to count  
13 as Class-II bingo. The NIGC's current imposition of  
14 additional requirements prohibits the growth of Class-II  
15 gaming and micromanages tribal business judgment and  
16 regulatory responsibilities. The regulation would eliminate  
17 virtually all games that Congress intended to allow as  
18 'similar to bingo.' The following proposed provisions place  
19 arbitrary restrictions on bingo and games similar to bingo,  
20 and the following restrictions must be deleted.

21 "Number one, the required use of five-grid cards, 25  
22 spaces; Subsection 546.4(c).

23 "Number two, games can only use ball draws numbered from  
24 1 through 75; Subsection 546.5(a).

25 "Number three, elimination of 'predrawn balls.' If



1 allowed to become law, this would prohibit electronic play  
2 of 'Bonanza bingo,' even as a game similar to bingo.

3 "Number four, mandatory time periods, two seconds, to  
4 play of the bingo game, a requirement wholly unsupportable  
5 under current law; Subsection 546.5(i).

6 "Number five, the requirement for multiple ball release.  
7 The release may not be instantaneous, and each release must  
8 take two seconds; by Subsection 546.6(c).

9 "Number six, the elimination of autodaub and requirements  
10 for two-second daub time before the next release is  
11 permitted; Subsection 546.5(i).

12 "We are also concerned that the regulations fail to  
13 resolve the basic problems associated with NIGC's game-  
14 classification process and omit a meaningful role for tribal  
15 regulations. Under the proposed regulations, independent  
16 gaming laboratories, as licensed by the Commission, would  
17 certify games as complying with the regulations. Without  
18 'grandfathering,' few, if any, existing games would comply  
19 with the proposed regulations, even those already approved  
20 by courts or by the NIGC itself. In the interest of  
21 fairness, the NIGC should permanently 'grandfather' all of  
22 the games it has approved as well as the games that the  
23 federal courts have approved.

24 "Finally, under the proposed rules, only the NIGC  
25 chairman may object to a classification decision without the

1 requirement of due diligence owed to the gaming tribes. Our  
2 tribe has no other recourse, as trustees of the Department  
3 of the Interior, except in defense of an enforcement action.  
4 Laboratories must be approved annually and may lose that  
5 approval if the NIGC is dissatisfied with their  
6 certification decisions. As the primary regulators of  
7 Class-II gaming, the tribes should be afforded the  
8 opportunity to challenge such an opinion on a government-to-  
9 government basis without having to first subject itself to  
10 enforcement action.

11 "In sum, the regulations arbitrarily redefine established  
12 regulatory terms and limit what Congress clearly intended to  
13 permit. Under IGRA, Congress clearly permits the use of  
14 electronic equipment, or 'technological aids,' in the play  
15 of Class-II games. Legislative history shows that gaming  
16 likewise should be allowed to evolve and grow through  
17 technological advancement. As noted in the Senate report:  
18 'The Committee intends that Tribes be given the opportunity  
19 to take advantage of modern methods of conducting Class-II  
20 games,' and the language regarding technology is designed to  
21 provide maximum flexibility.

22 "We feel the original goal and responsibility of NIGC has  
23 been deviated from IGRA's purpose and intent. From the  
24 creation of IGRA, the NIGC authority has exploded into areas  
25 that impede on the regulatory authority and responsibility

1 of the gaming tribes. Since the evolution of gaming, the  
2 tribes have invested considerably into training, education,  
3 and staffing to enforce statutes to protect the assets and  
4 integrity of gaming.

5 "NIGC imposes Class-II fees on the gaming tribes. Those  
6 fees are utilized against the tribes when there are  
7 discrepancies or differences of legal opinion; thus has  
8 created a breach of trust between the tribes and NIGC.

9 "The NIGC should honor both the spirit and language of  
10 IGRA, the tribes' hard-fought federal court victories, and  
11 NIGC's own regulatory framework: most prominently, the  
12 current 2002 definition regulations. We urge NIGC to give  
13 these comments serious consideration and to refrain from  
14 placing unwarranted restrictions on Class-II gaming.

15 "We are requesting a written response to our concerns and  
16 comments to our office as soon as possible.

17 "Sincerely, Andrew Hofstetter, Orthelia Patt, and Suzanne  
18 Moody."

19 MR. HOGEN: Thank you, Andrew. It's obvious that  
20 your commission has carefully reviewed our proposal and put  
21 a lot of thought into the comments that you made. In terms  
22 of responding, I expect the way we will respond to comments  
23 -- and we're going to get a lot of them at these  
24 consultation sessions and in writing -- if and when we  
25 propose to publish final regulations, we will precede the

1 regulations themselves with a preamble, and that preamble  
2 will, hopefully, address all the concerns that have been  
3 raised during the consultation process.

4 I'm sure that -- well, I know that a number of the things  
5 you have raised have been said to us before and will be said  
6 again, I'm sure. And we will attempt to group those  
7 together and address those concerns.

8 In your comments, you read out that Congress intended to  
9 permit the use of electronic equipment or technologic aids  
10 in the play of the Class II and that there should be an  
11 evolution and growth through technological advancement. Do  
12 you have any concerns -- do you think it would be  
13 problematic if technology evolved to the point that you  
14 really couldn't tell the difference between a Class-II and a  
15 Class-III machine?

16 MR. HOFSTETTER: I believe that we've gotten to a  
17 point in regulation -- as I stated in the letter, basically,  
18 the tribes have educated ourselves through avenues, through  
19 the federal government and the State, to become adequate to  
20 regulate the gaming.

21 To directly answer your question, I feel that we're at a  
22 fork in the road where we have Class-II games; though, to  
23 me, it appears as if NIGC's position is: If it looks like a  
24 slot machine, it is a slot machine. And basically, we feel  
25 that things being as they are are adequate.

1           We really strongly feel that NIGC is overstepping or  
2           expanding their authority into areas which kind of deviate  
3           from IGRA. But basically, we feel that keeping the Class II  
4           as they are is how it should be.

5           There's going to be a lot of tribes that are going to be  
6           greatly affected financially if this regulation does go  
7           through. There will be a loss of jobs. There are some  
8           states that are only allowed to have Class-II gaming.  
9           Fortunately, we are in a state that allows Class III. But  
10          if this should go through, I think it's going to have an  
11          economic ripple across Indian country.

12           MR. CHONEY: Well, to answer some of your comments  
13          that you just made: Especially in the state of Oklahoma, as  
14          well as Florida, when we go there and we see a machine that  
15          looks like a slot machine, it is a slot machine. And we  
16          would be remiss in our duties or our statutory authority to  
17          let that slide. We can't do that.

18          We were empowered by Congress to enforce IGRA. And by  
19          going out to the place and getting a report from our field  
20          investigators or other sources that this facility is running  
21          Class-III machines when it's a Class-II state, we have to do  
22          something. If we didn't, we'd be standing in front of  
23          Congress and asking us: "How come you're not doing your  
24          job?"

25          And one other comment on your written comment on the

1 consultation process. I've sat across from you, on at least  
2 one occasion that I can recall, consulting with you. The  
3 last three and a half years, that's all we've been doing,  
4 just about, is traveling all over the United States,  
5 different parts of the country: The Pacific Northwest, the  
6 Southwest, the Southeast, and recently, the Northeast,  
7 consulting with the tribes on various issues.

8 Here, we've been doing this Class II. Previously, we've  
9 been meeting with the tribes just to ask the tribes, the  
10 gaming tribes: "What can we do for you?" Or, "What's on  
11 your mind? Do you have any problems? Can we help you?"

12 We send out letters to the tribal chairmen. They don't  
13 show up, don't send a representative; but they don't show  
14 up. But still, we're being criticized, by other groups,  
15 that we're not doing consulting.

16 Well, we can back that up by documented proof, that we  
17 have been doing consulting, and that when trade  
18 organizations accuse us of not doing our consulting  
19 policy -- and which we do have a consulting policy. Former  
20 Vice Chairman Weston spent a great amount of time putting  
21 one together here. The Commission didn't have one, but we  
22 do have one, and we do adhere to it. So we have been  
23 consulting with the tribes on numerous occasions.

24 MR. HOFSTETTER: I have a question. What prompted  
25 these amendments, from the stance on which Class II

1 currently stands, to the proposal? Why does NIGC feel that  
2 it's essential to have these pushed forward? Our concerns  
3 -- one, it slows down the game and also the function. And  
4 though we may not have Class-II games right now, we may in  
5 the future, perhaps. However, we feel with these  
6 amendments, it could drastically affect the speed of the  
7 game and, therefore, customers playing the game.

8 I guess the rationale for the amendments is a little  
9 unclear.

10 MR. HOGEN: Well, let me try to explain as I  
11 understand it and also refer you to the preamble to our  
12 proposed regulations. We spent a lot of time putting that  
13 together, trying to build on those court cases that you  
14 mentioned a couple of times, as well as what we understand  
15 to be the end IGRA.

16 We're in a unique situation in that we've observed this  
17 litigation, sometimes between the Justice Department and  
18 tribes, sometimes between the NIGC and tribes, with respect  
19 to what is and what isn't permissible as Class II.

20 We've seen tribes scratch their head and wonder: What  
21 can we invest in to have a fun, profitable game as a Class-  
22 II game but not have somebody come along and jerk the rug  
23 out from under us, saying, "No, you can't play that game"?

24 Machine manufacturers would come to us and say, "Can you  
25 play this game as a Class II?" and ask for an advisory

1 opinion. Sometimes we'd give one; sometimes we wouldn't.  
2 And then later on, another machine comes in and it brings a  
3 feature that we didn't even think about analyzing when we  
4 looked at that last one. And there wasn't a road map.  
5 There wasn't a guide to help us, as a federal regulator, to  
6 help tribes and manufacturers. There was no "what is the  
7 difference between a Class II and Class III."

8 And we think that one of the jobs Congress gave NIGC is  
9 to write some federal standards with respect to Indian  
10 gaming. They said, "Tribes can do Class II, and they can  
11 use technologic aids, but if they're going to run electronic  
12 facsimiles of games of chance, that becomes Class III."

13 Well, that's not a real clear definition, and rather than  
14 have 225-plus tribes come up with their own definition, we  
15 think this is an area that clearly would be fostered if  
16 there was a federal standard.

17 In Oklahoma, Chuck mentioned, we've got tribes that are  
18 just literally right across the street from one another.  
19 And a number of years ago, we saw situations where these  
20 competitors were pushing the envelope, trying to have a  
21 better game than the one across the street.

22 Well, at some point in time, the line got crossed, and  
23 rather than just keep stumbling along with lawsuits or  
24 advisory opinions that may not be very effective, we thought  
25 regulations would be useful to the industry.



1        So we put together our advisory committee. We published  
2        five different proposals on our Web site. We spent all last  
3        summer, and then some, with the Justice Department, trying  
4        to bring them forward with respect to their position on the  
5        Johnson Act and reconcile what we were proposing with that  
6        act.

7        And so we feel an obligation to try to bring some clarity  
8        to the industry and do it in a way so the tribes aren't  
9        forced to use games that won't work; but, on the other hand,  
10       if we come to that place where you can no longer tell the  
11       difference between a Class II and Class III, we are very  
12       concerned that states will say, "Well, why are we just  
13       letting the tribes do this? Why don't we let everybody do  
14       that?" And if that occurs, who's going to drive down to  
15       Canita (phonetic) to do their gambling when they could do it  
16       in downtown Portland or whatever?

17       So we think we need to fill that gap that Congress left;  
18       come up with a bright line distinguishing the two; permit  
19       tribes to use technology, but not go beyond that mark they  
20       put in the sand: no electronic facsimiles of games of  
21       chance, unless it's pursuant to a tribe/state compact.

22       I don't know if that fully responds to your question, but  
23       that's at least my thinking on this matter. And again, in  
24       our preamble, we try to go into great detail as to why we  
25       thought this was necessary.

1 Any further comments or questions with regard to this?

2 Well, should you want to comment further, we're entertaining  
3 comments until the 23rd of August. It's possible we will  
4 extend that date, because we plan to issue some technical  
5 regulations that will look very much like that last set we  
6 published on our Web site. But they got a little obsolete  
7 with the changes in technology. We'll have those out soon,  
8 and if you have any comments with respect to those, you can  
9 give those as well.

10 MS. PATT: What gaming laboratory will you utilize  
11 to do the testing, to make the definition between Class II  
12 and Class III?

13 MR. HOGEN: We haven't designated a particular  
14 laboratory. What we would do under these proposed  
15 regulations if we finalize them: We would have those  
16 interested in doing this work apply to us for a  
17 certification. I expect GLI, Gaming Laboratories  
18 International, would be one of those. And probably -- IBMM  
19 is a large international gaming laboratory. Nick Farley &  
20 Associates does a lot of testing now. I expect those would  
21 be among those that might apply for and likely be certified,  
22 as well as others. And tribes could do it themselves if  
23 they chose to.

24 MS. PATT: So it almost seems backward, then, that  
25 you're going to go back to the gaming laboratories, then, to

1 do the testing whether they're Class II when you're imposing  
2 this on the tribes. I just want to go on record stating  
3 that it almost seems like it's in reverse, and that, if you  
4 utilized gaming laboratories, industries, that's the same  
5 companies that the tribes have been approved to utilize. So  
6 it almost seems like it would be somewhat in conflict with  
7 what the tribes have.

8 I mean, they're going to be doing something for your  
9 agency, and then they do something for our agency. You  
10 know, it almost seems like it's in conflict. So I don't  
11 know how -- there is going to be an issue of, what, trust or  
12 whatever with that particular company. Are they going to  
13 want your business then? Or will they want the tribe's  
14 business? Or will the tribes go away and not do business  
15 with them because they're now going to be your testing  
16 agency?

17 MR. HOGEN: Well, I think, under the proposal, it  
18 would all be the tribes' business, because if a tribe wanted  
19 to utilize a Class-II device, they would still do what  
20 they've always done, and that is: take it to the lab and  
21 say, "Does this machine really do what the manufacturer says  
22 it does? Is that random-number generator really random?  
23 Does the machine comport with the specifications they have  
24 on paper?" But you would also be asking them, "Does this  
25 meet the Class II definitions that NIGC adopted?"

1 MS. PATT: Yeah. See, we pay on both sides then.  
2 We pay on both sides, because we pay the NIGC fees, and then  
3 you utilize those fees to test against the tribes; and then  
4 you test against us, is the point I'm trying to make.

5 MR. HOGEN: We are funded solely by fees that we  
6 impose on tribal gaming, and we try to use that money to  
7 make the industry strong and keep the integrity there that I  
8 think it's developed over the years. But in terms of the  
9 labs working for us, they wouldn't really be working for us.  
10 They'd be working for the tribes.

11 MS. PATT: On both sides. On both sides of the  
12 spectrum.

13 MR. HOGEN: Well, they would be testing, among  
14 other things, to see if the devices met NIGC's  
15 certifications.

16 MS. PATT: Because that's the same issue, then,  
17 with the Colorado River Tribes. You know, I just want to  
18 make a point here. The Colorado River Tribes' litigation,  
19 those NIGC fees are utilized against -- you know, to go  
20 against that tribe, which our tribes are paying; and  
21 probably, the Colorado Indian Tribes are paying against  
22 themselves. So it's on both sides of the spectrum.

23 MR. HOGEN: Well, we're represented by the  
24 Department of Justice in a litigation. They're supported by  
25 taxpayers' dollars. So I understand the point you're

1 making, but we're really not taking tribal money to pay  
2 lawyers to argue against the tribes. The federal government  
3 is doing that with taxpayers' dollars.

4 Okay. Well, I think we've come to the end of the  
5 session. Thank you very much for bringing us your comments,  
6 and if you have further comments, please send them along.

7  
8 (The consultation with the Confederated  
9 Tribes of Warm Springs concluded at 12:18  
10 p.m.)  
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## A P P E A R A N C E S

For the Klawock Cooperative Association  
P.O. Box 430  
Klawock, Alaska 99925

Cheryle Griffitts, Office Manager/Bookkeeper  
Ann Wyatt, Gaming Commissioner  
Jonathan Rowan, Gaming Commissioner

(The consultation with the Klawock  
Cooperative Association began at 1:07 p.m.)

1 MR. HOGEN: I'm Phil Hogen, chairman of the  
2 National Indian Gaming Commission. Chuck Choney is the  
3 other member of the Commission right now. We're gathered  
4 here in Tacoma, on July 24, 2006, to conduct the  
5 government-to-government consultation with respect to  
6 regulations that the National Indian Gaming Commission  
7 published as proposed regulations, on the 25th of May of  
8 this year, relating to the classification of games or  
9 equipment that can be played for Class-II games that tribes  
10 can use without a tribe/state compact.

11 And we are hoping to consider these regulations, along  
12 with some technical regulations that we will be publishing  
13 in the very near future, this summer, and, hopefully, after  
14 we take into consideration all of the comments that we get  
15 at the consultations, the written comments, come up with  
16 final regulations this fall and, hopefully, finish this  
17 classification process.

18 We have quite a few staff members with us. Penny Coleman  
19 is our acting general counsel. Attorneys Michael Gross and  
20 John Hay, down here, are from her office in Washington, D.C.  
21 Natalie Hemlock is an assistant to the Commission in  
22 Washington. And Randy Sitton is our regional director for  
23 the Northwest, from Portland. And Rayanne Morris, who is  
24 seated next to him, is up in Bellingham. And we have Alan  
25 Phillips from our Sacramento office with us as well.

1           So with that said, if you will please introduce  
2           yourselves and tell us how you're affiliated with your tribe  
3           and gaming operation, we'd be very interested in getting  
4           your comments.

5           MS. GRIFFITTS: I'm Cheryle Griffitts. I'm the  
6           office manager/bookkeeper for the Klawock Cooperative  
7           Association, and we're basically here just to get a better  
8           understanding of the proposed rules.

9           MS. WYATT: I'm Ann Wyatt. I'm a tribal member.

10          MR. ROWAN: Jonathan Rowan, tribal council member  
11          and officer of the gaming commission, along with Ann here.

12          MR. HOGEN: So that we can better address your  
13          understanding or where you might fit into this  
14          classification, why don't you tell us briefly about the  
15          gaming that you're interesting in, or conduct, so that we  
16          know more about your operation.

17          MS. GRIFFITTS: Okay. We're a Class II, and we've  
18          lately been looking into the Lucky Tabs machines, and we  
19          just weren't sure if they were a Class-II game or not. So  
20          that's what we're here to try to find out, is: Is it a  
21          Class-II game, or do we have to wait until these rules come  
22          out stating it is?

23          MR. HOGEN: Okay. Well, that's exactly why we  
24          need rules like this. Because, right now, there is a great  
25          deal of uncertainty as to what is or what isn't Class II.



1 The Indian Gaming Regulatory Act said tribes can play Class  
2 II games without a compact with the State, and they can use  
3 electronic and technologic aids to do that.

4 But they also said if a game is an electronic facsimile  
5 of a game of chance, then it's Class III, and you have to  
6 have a compact. So therein lies the challenge. Where do  
7 you draw the line? What's the difference between  
8 electronic, technologic aids and electronic facsimiles?

9 So to try and come up with a bright line to help tribes;  
10 so tribes who are going to invest in equipment, they know  
11 they're doing the right thing and won't buy something and  
12 then have somebody come in the next day and say, "Sorry, you  
13 can't use that without a compact," we formed a Tribal  
14 Advisory Committee, had quite a number of meetings with  
15 them, and went through a series of drafts of proposed  
16 regulations.

17 We did five different drafts of these classification  
18 standards that we posted on our Web site. We did two drafts  
19 of some technical standards that would talk more about the  
20 electronics and what's in the black box; and last spring, a  
21 year ago, in 2005, were about ready to go to the Federal  
22 Register to publish these as proposed regulations when the  
23 Justice Department, that enforces the Johnson Act, says you  
24 can't have gambling devices in Indian country, expressed  
25 some concerns about whether this would comply with the

1 Johnson Act.

2 So we did a lot of negotiation with the Justice  
3 Department, and eventually they proposed amending the  
4 Johnson Act, saying that there could be an exception from  
5 that Johnson-Act prohibition for technologic aids if those  
6 devices that were used for that were done pursuant to the  
7 regulations the NIGC would publish.

8 They proposed to Congress that that change needed to be  
9 made, and we have then proposed regulations that would say,  
10 in some considerable detail, what games can and can't do.

11 As we looked at the Indian Gaming Regulatory Act and its  
12 legislative history, what its intent was, and we looked at  
13 those court cases -- and there were a few that the Justice  
14 Department brought, some that NIGC was involved with, that  
15 challenged whether particular games could or couldn't be  
16 played as Class II -- we looked at those court opinions and  
17 tried to write a set of regulations that said, "You can play  
18 bingo and pull tabs and games that are Class II with  
19 electronic equipment if you maintain some of those basic  
20 principles that are associated with Class II." And we  
21 looked at paper bingo, and it's a game where it's kind of a  
22 race to see who can be the first one to cover the pattern.  
23 And players do that by participating: They mark their  
24 cards.

25 Well, some of the games that were proposed had the

1 machine do all of it. You pushed the button and the game  
2 was all over. And we thought that's going too far, that's  
3 too much of an electronic facsimile of a game of chance. We  
4 need to keep the player participation in there.

5 So basically, one of the approaches we take is, if you're  
6 playing bingo, the machine can call the numbers, but it  
7 can't call enough numbers to end the game that first time.  
8 And then you've got to give the players an opportunity to  
9 daub their card. They don't have to find "3" under "B" and  
10 daub it. They can push the button and say, "Autodaub it for  
11 me. If I've got it on my card"--which would have to be on  
12 your machine--"cover it."

13 And then after the players have an opportunity to do  
14 that, you call some more numbers. At that time you can call  
15 enough to give somebody a bingo. And then you daub again.  
16 And just like a paper game, if it's my card and I'm sitting  
17 here visiting with Chuck and I sleep my bingo, they'll call  
18 some more numbers, and somebody else might beat me to that  
19 punch.

20 So we tried to put that into these regulations, saying  
21 that: "Yeah, you can play with electronic aids, but you  
22 can't take the player out of it. Player participation is an  
23 essential element."

24 And similarly, with pull tabs, if you do it all  
25 electronically: If Lucky Tab II game has a row of pull tabs

1 on it, and when you put your entry fee in or you buy your  
2 pull tab, it dispenses that pull tab, and on the machine, it  
3 looks like slot-machine reels, but that's just telling you  
4 did you win or did you lose. The real game is there in that  
5 piece of paper. And if you did that all electronically, it  
6 would become an electronic facsimile of the game of pull  
7 tabs, and it would be Class III.

8 So we did our best to try and explain all of that in  
9 these proposed regulations. We wrote a long preamble,  
10 trying to say how we think this developed with Congressional  
11 intent and court cases and so forth; and, hopefully, we're  
12 going in the right direction.

13 Now, we have heard comments saying, "Oh, you're slowing  
14 the game down too much, NIGC." Or, "You're not letting us  
15 have the flexibility that was intended." Well, we don't  
16 want to slow it down so it's not profitable, but we think  
17 there has to be a difference between that slot machine  
18 that's prohibited under Class II and what's permissible. So  
19 that player participation, of course, is going to make it a  
20 little slower than if it was all automated. So we're trying  
21 to get to the right place, and that's basically where we're  
22 going.

23 And in the process of getting to this place, machine  
24 manufacturers would come to us and say: "Will you please  
25 write an opinion for this game that we've developed and tell

1 us it's Class II so we can take it out and tribes can play  
2 it and they won't worry about NIGC coming after that?" So  
3 we have written a number of those advisory opinions. There  
4 are other people that have asked for opinions and we just  
5 haven't had the time or haven't been able to get it done.

6 But those advisory opinions are just that. They're  
7 advisory, they're not final Commission action. And that's  
8 too uncertain a road to go down. We think having  
9 regulations -- and these regulations, if we adopt them,  
10 would then say to tribes and game manufacturers: "When you  
11 have a game you want to play without a compact, as Class II,  
12 take it to a gaming laboratory" -- and we would certify  
13 those that could do this -- "and they will test it to see if  
14 it complies with the regulations. And if it does, then  
15 you're okay. Then you can play the game."

16 The Tribal Gaming Commission would need to be involved in  
17 that. They'd have to give their approval. And if NIGC  
18 disagreed with that opinion, we could object and, hopefully,  
19 try to resolve that. But that would avoid NIGC becoming a  
20 bottleneck and waiting for us to get done before they can  
21 play the game, but permit them to go forward.

22 MS. GRIFFITTS: Okay. So with that, when we  
23 decide, okay, we want to purchase this game and we talk to  
24 the person we're going to buy it from, we have to set it up  
25 then and there to get it...

1 MR. HOGEN: If the regulations were in place, you  
2 would have to get that certified, yes.

3 MS. GRIFFITTS: Certified, as a Class II.

4 MR. HOGEN: Unfortunately, today we don't have  
5 those in place. So if you buy a machine, you need to be a  
6 little forewarned that, if it doesn't comply with whatever  
7 we finally adopt, that may be different from what we  
8 proposed, you'd have to either change those games to comply  
9 with that or replace them.

10 Fortunately, given the technology of today, many of these  
11 server-based games--that is, they all go into the same  
12 computer because players are playing against one another--  
13 they can change that with, you know, probably more than a  
14 few key strokes, but write the program so you won't have  
15 bought a piece of equipment that can't still be used.

16 MS. GRIFFITTS: Okay.

17 MR. ROWAN: I have a question. Did I hear you  
18 say, in the beginning, that you have to have a compact to  
19 have gaming II?

20 MR. HOGEN: No, no. No compact is required for  
21 Class II. It is for Class III.

22 MR. ROWAN: So you can go ahead and get those  
23 machines then, that we --

24 MR. HOGEN: There are many tribes that don't have  
25 compacts that are playing Class II games with electronic

1 player stations, yes. Now, not all of those would comport,  
2 comply, with these proposed regulations if we adopt them.  
3 And so you might want to look at what we've proposed and  
4 look in your crystal ball and see: How will these games  
5 work, or will they comply if these regulations get  
6 finalized? We're going to try to get this done by this  
7 fall. So hopefully, the tribes would be able to wait to  
8 know for sure.

9 MR. CHONEY: Do you have a time frame when you  
10 want to make your purchases?

11 MS. GRIFFITTS: No. Actually, it's just something  
12 we just started looking into and getting different opinions  
13 from different lawyers and just trying to be sure that it's  
14 all going to be okay. But I think waiting until these are  
15 actually adopted and it clearly spells out what's going on,  
16 and if we can do it, I think that's something we can wait  
17 on.

18 MS. COLEMAN: Can you tell me what kind of gaming,  
19 specifically, you have now?

20 MS. GRIFFITTS: Playing bingo and just regular  
21 pull tabs.

22 MS. COLEMAN: So how often do you do that?

23 MS. GRIFFITTS: Our bingos are twice a week.

24 MS. COLEMAN: Twice a week.

25 MS. GRIFFITTS: And the pull-tab shop is open

1       seven days a week.

2               MR. HOGEN:  How many seats in your bingo hall?

3               MS. GRIFFITTS:  There's about 50.

4               MR. HOGEN:  What is the average crowd, or is that  
5       the average crowd?

6               MS. GRIFFITTS:  No, the average crowd is usually  
7       about 15 to 20, at the most, yeah.

8               MR. HOGEN:  Are you in a pretty rural, remote  
9       market, then?

10              MS. GRIFFITTS:  Yeah, we are.  But we're also the  
11       hub on Prince Wales Island, so there's potential there to  
12       draw in another crowd, that we're just not getting, if we  
13       were to go with these machines.

14              MR. HOGEN:  Well, good luck with that.

15              MS. GRIFFITTS:  Yeah.  That's all I have.

16              MR. HOGEN:  Well, thank you very much.  If you  
17       look at these and have further questions, we'd try to  
18       respond.  But if you have some comments, please send us a  
19       letter.  August 23rd is the date we're hoping to get all the  
20       comments in.

21              MS. GRIFFITTS:  Well, thank you all.

22              MR. HOGEN:  Thank you.

23  
24              (The consultation with the Klawock

25              Cooperative Association concluded at 1:22 p.m.)



## A P P E A R A N C E S

For the Shoalwater Bay Indian Tribe  
P.O. Box 130  
Tokeland, Washington 98390

Mike Shipman, Tribal Vice-Chair  
Pam Pavlich, Gaming Commission Executive  
Director  
Bryan Tate, Casino General Manager  
Bob Bojorkas, Tribal Assistant Administrator  
Scott Crowell, Attorney  
Judy Shapiro, Attorney  
Bruce Tower, Paralegal

(The consultation with the Shoalwater Bay  
Indian Tribe began at 2:00 p.m.)

1 MR. HOGEN: Good afternoon. I'm Phil Hogen,  
2 chairman of the National Indian Gaming Commission. We're  
3 gathered here in Tacoma, on July 24, 2006, to discuss with  
4 the Shoalwater Bay Indian Tribe the proposed regulations of  
5 the National Indian Gaming Commission published in the  
6 Federal Register on May 25th of this year, dealing with  
7 definitions and proposed classification standards as it  
8 relates to what tribes can do in the way of Class-II gaming,  
9 without a compact, as opposed to what constitutes Class-III  
10 gaming, wherein a compact is required.

11 Commissioner Chuck Choney is with me. We are the current  
12 members of the Commission. With us are a number of our  
13 staff members. Acting General Counsel Penny Coleman is  
14 here. Michael Gross is an attorney in her office, as is  
15 John Hay. And we have our regional director from Portland,  
16 Randy Sitton; and Natalie Hemlock, who is an assistant with  
17 the Commission in Washington, D.C. And then we have --

18 MR. PHILLIPS: Mark Phillips.

19 MR. HOGEN: -- Mark Phillips. I can't remember  
20 the Phillips name. Alan Phillips is from our Sacramento  
21 office. I sometimes call him Kevin. In any event, that's  
22 who we are. And because this is a big undertaking, we, the  
23 Commission, need good assistance, and we want those who are  
24 assisting us to know what the tribes have to say about this,  
25 so we're all here.

1           So having said that, if you would, please, introduce  
2           yourselves to us and tell us how you fit into the gaming or  
3           the Tribal arrangement so the reporter will know who is  
4           doing the talking. Then we'll be very interested in hearing  
5           your comments in regard to these proposals.

6           MR. BOJORKAS: Robert Bojorkas, assistant tribal  
7           administrator for the Shoalwater Bay Tribe.

8           MS. SHAPIRO: Judy Shapiro. I'm a lawyer brought  
9           in to assist the tribe in its Class-II comments.

10          MR. SHIPMAN: Mike Shipman, vice-chairman for the  
11          tribal council.

12          MR. CROWELL: Scott Crowell, attorney for the  
13          tribe.

14          MR. TATE: Bryan Tate, GM of the casino.

15          MR. TOWER: Bruce Tower. I work for Scott  
16          Crowell.

17          MS. PAVLICH: Pamela Pavlich. I'm executive  
18          director of the tribal gaming for the Shoalwater Bay Tribe.

19          MR. CROWELL: Let me make just a couple of  
20          comments, and then I'd like to turn it over to Vice-chairman  
21          Shipman and Bryan Tate.

22          First, thank you for the half an hour to discuss these  
23          matters that we're thinking about and that brought us here  
24          today, and other discussions between now and the 23rd that  
25          might occur before we finalize our formal written comment to

1       you at that point in time.

2           There are a number of concerns that we have. We probably  
3 will -- to make the best use of today -- is try to reserve  
4 those for the written comments. They're the ones that are  
5 more process in nature and legal in nature. We'll do that.  
6 Also, if we have some time, we'd like to get into some of  
7 the technical aspects of the proposed regulations.

8           One of the reasons I'm glad that we could meet today is  
9 for you to hear, from an anecdotal perspective, the  
10 particular position of the Shoalwater Bay Tribe. The  
11 Shoalwater Bay Tribe does have a compact with the State of  
12 Washington. And the location of the tribe is very remote,  
13 but very beautiful, out on the Washington coast, but is way  
14 off of Highway 101. And as a result of that, you know, it's  
15 -- it's a struggle to use gaming for economic viability.

16          But that being said, the tribe is able to turn the  
17 opportunity into something that's become, you know, very,  
18 very important to the tribe and very, very important to the  
19 non-Indian community. And as it works out, because of the  
20 allocations in the compact and the transfer agreements that  
21 are required under that compact, if we lose the option of  
22 viable Class-II gaming, it's going to have a serious effect  
23 on the tribe. That's one of the things that we'd like to  
24 try to use today's opportunity to get out on the table.

25          And, with that, unless you want to add something first,

1 I'll turn it over to Bryan Tate, who is the general manager  
2 of the casino, and he can tell you the specifics of the  
3 experience the tribe has had with Class II and how it plays  
4 in with some of the older games versus the newer games, and  
5 the viability of that versus transferring an allocation  
6 right to another tribe under the compact.

7 MR. TATE: Good afternoon, everyone. Our casino  
8 is a little bit unique in that, as recently as nine months  
9 ago, we had three of the older Rocket Class-II games on the  
10 floor, side by side with 19 of the faster Rocket games on  
11 the floor.

12 The location on the floor had not changed for several  
13 years. The casino had not moved; it had been in the same  
14 spot. The machine was in the same part of the casino for  
15 several years. Customers got used to coming in and knowing  
16 where these games were.

17 In September of last year, the slower Rocket games, the  
18 three of them, contributed to the tribe, our share, an  
19 average of \$14 a day. The 19 faster, newer games  
20 contributed \$70 a day per game. So the older, slower  
21 machines only generated 20 percent of the income, the  
22 average income, of the faster games.

23 Now, the latest month that I have figures for  
24 financially, for Class-II revenue, is June. In June, the  
25 casino's Class-II revenue, our share, was 120,000. That

1 120,000 was contributed all by the faster games, because we  
2 had taken out the slower games in October of last year.

3 So if the same ratio holds true, then that 120,000 could  
4 -- we could be faced with a situation where it's reduced by  
5 four-fifths. So the tribal monthly revenues we win off of  
6 the existing Class-II games would go to 24,000. That  
7 monthly hit of \$96,000 a month, over a period of a year,  
8 will almost completely take out the net income of the casino  
9 for the fiscal year.

10 Now we're in a situation where we have 150 Class III on  
11 the floor. The other Class III from the State are leased  
12 out to other tribes. Those leases do not expire until, the  
13 earliest, November of next year. So the possibility of  
14 replacing Class II with Class III is not an option for us  
15 right now.

16 About a year ago, the Council started looking at  
17 expanding the casino. We're in the Design Phase 8 or 9.  
18 Some cost in the expansion, as far as architect fees, legal  
19 fees, site work and that sort of thing -- it stands at over  
20 200,000 right now.

21 So if we go forward with the expansion, currently it's  
22 going to have to be paid for with Class-II revenue. And a  
23 \$96,000-a-month hit on Class-II revenue effectively brings  
24 us back to a breaking point.

25 Mike, you may want to share what that would mean for the

1       tribe and the members, to have the casino's annual net  
2       income wiped out.

3               MR. SHIPMAN: Mike Shipman, vice-chairman of the  
4       Shoalwater Bay Tribe. A lot of our programs are run off of  
5       our casino right now. We're in a real remote area, we have  
6       no fishing rights. I think our reservation is a mile by a  
7       mile square. 50 percent of that is wetland that we can't do  
8       nothing with. We have no timber. So this casino is the  
9       economic income for the tribe.

10       If we take a hit on this proposal for regulations on  
11       these machines here, it's going to devastate the income for  
12       the Shoalwater Bay Tribe and the people. So I just hope  
13       that you guys really take a good look at what's going on  
14       here.

15       I mean, we have 280 tribal members. We have no per  
16       capita. I mean, this is running our health centers,  
17       whatever our shortfalls are in our federal fundings. I  
18       mean, if this does take through (sic), it's going to take a  
19       lot of our programs away.

20       The last two years was the first time that we offered  
21       full-ride scholarships to our high-school graduates. This  
22       is revenue that comes from our Class-II games. And we did  
23       that again this year, for the first time ever. Now, if this  
24       goes away, that's going to go away.

25       We're trying to look to the future of our children, and

1 this is the -- this the second year that we had all of our  
2 seniors graduate from high school, because we had funding to  
3 say: "If you graduate, we'll pay for your school."

4 MR. CROWELL: If I could add on that, in putting  
5 this in the larger context, because I think this Class-II  
6 issue needs to be looked at in the larger context. I know  
7 that some of you know this. In fact, I think, Phil, you  
8 were at Justice when we settled potential enforcement action  
9 against the Shoalwater Bay Tribe.

10 The tribe stood strong against the State of Washington's  
11 compact efforts for a very long time, and including  
12 operating a more traditional Class-III license in the  
13 absence of a Tribal/State compact. NIGC brought a notice of  
14 violation. We went through an administrative appeal with  
15 the administrative-law judge, looked at the equities of the  
16 circumstance, and stayed any further enforcement while we  
17 attempted to negotiate out an agreement with the State,  
18 which the tribe did.

19 And for the most part, you know, that's turned out to be  
20 a great situation. You know, we still believe that the  
21 compact with the State is not as fair as it should be given  
22 the scope of the games the tribes might play and given the  
23 arbitrary limits on what are the numbers that the tribe  
24 might play.

25 But it enabled the tribe to get into a position to start



1 doing some serious planning and capital investments in terms  
2 of what the operation would look like. And, you know, in  
3 this business, everything is subject to some degree of  
4 change. But one of the reasons that NIGC pushed this and  
5 one of the reasons that we pushed for a compact was to  
6 provide some certainty to the environment in terms of making  
7 those investments and moving forward.

8 And it's turned out to be a good situation for the tribe.  
9 Employment is up, revenues are up. The operation is now not  
10 just a source of revenue for the tribe, but it's really  
11 turned out to be one of the most important community-event  
12 centers for the entire area, not just for the tribe.

13 And, you know, you make decisions in good faith, and it  
14 was an ocean change for the tribe, to stop fighting with the  
15 State of Washington and start doing everything it could  
16 without the tribe being in harm's way.

17 And yet here we are, in a situation to where the tribe  
18 has made the decisions regarding capital investment,  
19 regarding expansion, regarding transfer agreements,  
20 regarding the mix of Class-II games that are on the floor;  
21 you know, all based on good-faith reliance on the positions  
22 taken by the federal government.

23 And those of you who have known me a long time, you know,  
24 going from a situation of standing up to what we thought was  
25 wrong on the part of the State to getting out of harm's way

1 is a major change in approach and philosophy that the tribe  
2 has. And now, in some respects, it looks like, if this rule  
3 goes through, it's the old adage of "no good deed goes  
4 unpunished." And here we're playing by the rules, and yet  
5 still find ourselves in a position to have the rug pulled  
6 out from under the tribe. That's important for you to hear,  
7 anecdotally.

8 If this rule goes into effect, it will probably take the  
9 tribe from the black to the red. It will take the tribal  
10 government from being able to barely find the funding for  
11 some of these critical programs to having no option for the  
12 funding of those critical programs. And we think that those  
13 economic consequences need to be taken into account as you  
14 move forward.

15 And, you know, frankly, I'd like to see the rule not go  
16 into effect at all. But if it does go into effect, it seems  
17 to me there needs to be some kind of provision that would  
18 allow those tribes that have acted in good-faith reliance on  
19 prior decisions and actions of the NIGC to be able to  
20 continue to operate under that set of assumptions.

21 MR. HAY: Bryan, what's the difference in speed  
22 between the old and new Rocket games, the average speed of  
23 each of them, to play?

24 MR. TATE: The older were the single ball on each  
25 machine. It's been so long since those games were out on

1 the floor. I think about 10 seconds.

2 MR. HOGEN: Well, this is a very good, poignant  
3 example that you have presented to us. And it sounds as if  
4 Shoalwater Bay is doing exactly what the Indian Gaming  
5 Regulatory Act intended tribes to do with their dollars in  
6 terms of meeting unmet economic-development needs and  
7 providing opportunities.

8 It seems to me where we have difficulty here, if we can  
9 call it that, might be a definition of terms. You say you  
10 brought in these Class-II machines. There might be some  
11 that would argue you brought in Class-III machines, not  
12 Class-II machines that replicate what the Washington State  
13 compact calls for, but rather machines that would -- or  
14 could be characterized as electronic facsimile of games of  
15 chance that IGRA said are Class III.

16 I'm not prejudging that. I'm just saying for the sake of  
17 discussion. And therein lies the challenge to NIGC. We  
18 just do not have the tools we need, or I don't think tribes  
19 have the tools they need, to clearly say: "Okay, this is  
20 unarguably a Class-II device" as opposed to quarrelling  
21 about where it is or it isn't.

22 And the court cases that were decided, in many cases,  
23 said: "We're just confining this to the facts that are  
24 before us, and the" -- I would submit the games that those  
25 decisions dealt with might be more like the old Rocket bingo

1 games than the new purportedly Class-II games that you  
2 bought.

3 So we want to bring clarity to this issue. We don't want  
4 to bring economic development and so forth to a screeching  
5 halt. And we certainly will look before we leap and  
6 consider economic consequences. But if there are instances  
7 where tribes have purportedly put a Class-II device that,  
8 under, I think, a fair reading of the Act, wouldn't stay in  
9 that category, that would probably require some  
10 modification, if we adopt something like what we've drafted.  
11 But your examples here, your track record, will be used by  
12 us as we try to get to the right place.

13 MS. SHAPIRO: Well, Mr. Chairman, I think there's  
14 not much question that, under the regulations that you  
15 propose, that a lot of the games that are presently on the  
16 floor will be termed a facsimile and impermissible Class-III  
17 devices. I think we're here because we would like to have  
18 that line be somewhere closer to our game than it is to your  
19 present proposal.

20 Some of the vital issues for the tribe clearly is the  
21 speed of play. And a game that goes as long as 10 seconds  
22 not only is going to lose revenue in terms of going from a  
23 two-cycle to a 10-cycle--that's a 20-percent cut right  
24 there--but in terms of losing players.

25 This is a remote facility. People aren't going to go

1 that far to play a game that isn't even moderately enjoyable  
2 for them. They can't replace them with Class-III games  
3 because, in the current structure, their Class-III  
4 allocations are already committed elsewhere.

5 They've got an expansion that depended on the continued  
6 survival of the current revenue stream. And I'm not sure if  
7 it was clear. There's \$200-something-thousand already sunk  
8 into that expansion. That will be lost. If their revenue  
9 stream is cut off, if these rules go into effect as  
10 currently proposed, chances are very good that not only will  
11 they lose revenue, they will have to abort that expansion,  
12 they will have to lay off workers, and it's not clear that  
13 any operation would survive.

14 So I think what they're hoping -- and obviously, we'll  
15 fill that out more fully in the final comments -- is that  
16 the line that you draw will fall a little bit closer to  
17 where we hope it will so that at least there will a viable,  
18 identifiable game for them to rely on in future revenue.

19 It means, perhaps, cutting down some of the additional  
20 seconds in the game cycle. It means at least considering  
21 the possibility that they don't have to be multiple daubing  
22 directions. Or at least the number, cutting down the number  
23 of daubing directions so that it remains a viable game. And  
24 I think that's what they're looking for.

25 I don't think that anyone here is saying that the tribe

1 should not be able to identify what's an acceptable game.  
2 But it has to be an acceptable game economically at the  
3 other end of this process.

4 MR. SHIPMAN: Four years ago, before we signed our  
5 compact and everything, we had problems with the Class-III  
6 machines being taken out and everything. So we got a dozen  
7 Class-II machines in there. There was slower play. They  
8 just didn't get played. Four years ago, we had to almost  
9 close the doors to the casino.

10 Last year, we got good Class-II machines. Now we're in a  
11 whole different ball game and we're funding so many  
12 different programs off of this. So if we could just try and  
13 look at the classifications of games that we have and try to  
14 kind of work towards that, that would help us quite a bit.

15 MR. HOGEN: Well, we haven't cast anything in  
16 stone yet. At least speaking personally now, not as a  
17 member of the Commission, having players participate in the  
18 Class-II games as opposed to pushing a button and have the  
19 machine doing everything else, that's a proposition I'm  
20 pretty well wed to. But, you know, some of the parameters  
21 to get there may still be flexible, so --

22 MR. TATE: Mr. Chairman, could I ask a question,  
23 please?

24 MR. HOGEN: Sure.

25 MR. TATE: If, in our small casino, which is,

1 machine-wise, one of the smallest in the state -- if the  
2 economic impact for us is \$96,000 a month potential loss of  
3 Rocket revenue, plus a loss of the 200,000 sunk-cost if the  
4 expansion could not go forward, plus the loss of the three  
5 to five jobs if we lose that kind of revenue per month -- if  
6 the hit on the Shoalwater Bay Tribe, very small tribe, is a  
7 million dollars a year, has the NIGC come up with a study to  
8 show what you folks project the hit is going to be on Indian  
9 country as a whole, as far as lost revenue, lost sunk-cost,  
10 and lost employment is concerned?

11 MR. HOGEN: We've tried to get a perspective on  
12 that. The problem -- part of the problem is we think that  
13 some of the devices being played--and maybe many of them in  
14 Class-II environments--constitute Class-III gaming,  
15 shouldn't be played that way. And for us to, in effect,  
16 say: "Well, how is this legal activity going to compare  
17 with that illegal activity?" has some challenges.

18 And we're going to try and get information that we need  
19 with respect to: Is there a direct relationship between the  
20 speed of play and the amount of money people are going to  
21 spend when they go to the casino? I'm sure there is some  
22 relationship to that. I don't know that it's directly.

23 And so we're going to evaluate that. But I hope you can  
24 appreciate the concern that we have about -- I mean, this is  
25 maybe not the best example, but if you had alcohol

1 prohibition and we were considering introducing three-two  
2 beer, would it be right to say: "My gosh, what's that going  
3 to do to the speakeasy industry?" So we're going to try and  
4 do the right thing and gather the right information.

5 MR. BOJORKAS: Mr. Chairman, we had a member of  
6 our tribe come in. He's James Anderson. He's also chairman  
7 of our gaming commission.

8 MR. HOGEN: Welcome.

9 MR. TATE: Let me assure you, at least in this  
10 process, those three slower games, sitting side by side with  
11 the 19 faster games, generated 20 percent of our revenue  
12 over a period of several years with the same basic clientele  
13 or customer base. Over time, folks chose the faster 19  
14 machines by 5 to 1.

15 MS. COLEMAN: The faster machines, are they a one-  
16 touch game, where you just put the money in and you --

17 MR. TATE: One-touch, yeah.

18 MS. COLEMAN: And so they tend to use those a lot  
19 more than the slower machines. Did you ever have a time  
20 when you had slower machines, or were you not there?

21 MR. SHIPMAN: He wasn't there.

22 MR. TATE: That was before me. Well, they had  
23 three -- there were three single-ball Rocket machines when I  
24 first came.

25 MS. COLEMAN: Right. But, I mean, was there a



1 time when you had a lot of the single balls, so it was kind  
2 of like MegaMania, where you --

3 MR. BOJORKAS: We had MegaMania, and it didn't cut  
4 it. We were losing money.

5 MR. TATE: So speed is a definite factor for us in  
6 changing those games out.

7 MR. CROWELL: Let me -- I'm still trying to figure  
8 out the paradigm here. Maybe I've been at this too long.  
9 When we go back to Chairman Tony Voigt and Mike Cox writing  
10 the original regulations, it struck me that the ultimate  
11 answer is -- maybe it's what you're now trying to struggle  
12 with, but the ultimate answer was: Well, what is the game  
13 of bingo? And so long as that's the game that's really  
14 being played on the machine, then the machine should be  
15 allowed.

16 And there was a lot of presentation by the tribes at that  
17 point, that that's the paradigm that should be embraced, and  
18 the Commission went a different route. And we had, you  
19 know, the ultimate dispute that ultimately seemed to be  
20 resolved, or at least got out of that paradigm, as to: When  
21 is it an electronic facsimile, a Johnson-Act device?

22 And if you look at what's been done and the opinions --  
23 and this is actually why I've asked Judy to come on board,  
24 because she's been much more involved in the details of the  
25 specifics than I have been. But if you look generally to

1 these opinions, there seems to have been an effort to come  
2 back into that paradigm that says: Is the game that's being  
3 played here really bingo?

4 When I look at this proposed regulation and I see the  
5 requirements -- you know, it's the two-second limit between  
6 different sequences, and I have to ask myself: If it's a  
7 half a second versus two seconds, does that make it -- turn  
8 it into something other than bingo as opposed to bingo? And  
9 I still have a hard time trying to get a handle around what  
10 paradigm is being used to determine what is a lawful  
11 Class-II game and not.

12 And it seems to me that -- you know, there's a lot of  
13 skeptics out there that look at these proposed regulations  
14 and say: "Well, this is an attempt to slow the game down,  
15 make it less economically viable, play into the hands of the  
16 leverage of the State in negotiations and squeeze tribes --  
17 you know, more and more tribes into agreements that they may  
18 necessarily, you know, not think is good for the tribe.  
19 That's one read that's out there of those proposed  
20 regulations.

21 So if you're going to move forward with this, it seems to  
22 me that you've got enough concrete structure out there to  
23 say, you know: "We're going to move forward with a set of  
24 regulations, to make sure that the game that's being played  
25 on the machine is bingo," but that you have some flexibility

1 within what you've presented in the draft to allow the game  
2 to continue to be fairly fast, continue to make it fairly  
3 entertaining for the player, so that the economic viability  
4 can be sustained and you still meet your objective of making  
5 sure that the game is bingo.

6 And I'm hoping, as you move forward -- you know, that,  
7 bottom line for Shoalwater Bay in particular, it is a game  
8 of economics; and if the viability of Class-II gaming is  
9 taken out -- even though this is a compacted tribe in a  
10 Class-III gaming state, if you take out the viability of a  
11 Class-II gaming device, the tribe may very well have to look  
12 at shutting its doors down. And that's how --

13 You know, there's a lot of tribes out there where maybe  
14 this only means a little more money here and a little less  
15 money there. Here, it may mean the very survival of the  
16 operation. So I implore you, as you move forward, to try to  
17 build in as much flexibility in making this game as player-  
18 friendly as possible and still meet that parameter: You're  
19 playing the game of bingo.

20 MR. HOGEN: That will be one of our objectives, as  
21 well as addressing the concerns that we tried to enunciate  
22 in our preamble with respect to where we're going.

23 We thank you very much for coming to consult with us, and  
24 we're going to keep the record open until the 23rd of  
25 August. And I think you say you might be sending us more.

1 MR. SHIPMAN: Yeah. We will definitely be sending  
2 you much more comprehensive comments in a written statement.

3 MR. HOGEN: In the near future, we expect to  
4 promulgate a set of technical regulations as the companion  
5 to this package that we're talking about today. It will  
6 look a lot like what we had on our Web site when we took a  
7 breath back in April of 2005. But those regs got a little  
8 stale, given technologic changes, and we're having to do  
9 some modernization changes. But they will be coming out  
10 soon. Thank you.

11  
12 (The consultation with the Shoalwater Bay  
13 Indian Tribe concluded at 2:31 p.m.)  
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## A P P E A R A N C E S

For the Confederated Tribes of Grand Ronde  
9615 Grand Ronde Road  
Grand Ronde, Oregon 97347

Lynn Hillman, Gaming Commission Executive  
Director

Denise Harvey, Gaming Commission Chair

Cheryle Kennedy, Tribal Chairman

Buddy West, Tribal Council Member

Jack Giffen, Tribal Council Member

Reyn Leno, Tribal Council Member

Lisa Bluelake, Attorney

Rob Greene, Attorney

(The consultation with the Confederated  
Tribes of Grand Ronde began at 2:43 p.m.)

1 MR. HOGEN: I'm Phil Hogen, chairman of the  
2 National Indian Gaming Commission. I want to welcome the  
3 Confederated Tribes of Grand Ronde to this government-to-  
4 government consultation session. Commissioner Chuck Choney  
5 is here with me. We are the NIGC today. We have quite a  
6 staff with us.

7 Penny Coleman is our acting general counsel. Michael  
8 Gross and John Hay are attorneys from her office. Natalie  
9 Hemlock is an assistant to the Commission in D.C. Joe  
10 Smith, who is not a stranger to Grand Ronde, is head of our  
11 audit division and is here with us, as is Randy Sitton, who  
12 is the regional director for our Portland, Northwest  
13 division. And then we have Gary Peterson and Mark Phillips,  
14 from Portland, and Alan Phillips, from our Sacramento  
15 office, with us.

16 So we're gathered here on the 24th of July 2006, in  
17 Tacoma, to consider regulations that the National Indian  
18 Gaming Commission has published in the Federal Register on  
19 May 25th of this year, dealing with definitions and  
20 classification standards that we might adopt with respect to  
21 distinguishing equipment you can use to play Class-II,  
22 uncompact games with those that require compacts, or Class  
23 III.

24 So having said that, we want to again welcome you. And  
25 would you introduce yourselves so we're on the record here

1 and our recorder will know who's speaking. And tell us  
2 where you fit into the tribe's operation, gaming, or  
3 government.

4 MS. KENNEDY: Good afternoon. We're pleased that  
5 we're here to meet with you and to express what our comments  
6 are. I'm Cheryle Kennedy. I'm the tribal chair. We have a  
7 number of people.

8 MS. BLUELAKE: Lisa Bluelake. I'm a staff  
9 attorney for the tribe, and I work specifically with the  
10 gaming commission. They're one of my clients. That's why  
11 I'm here.

12 MR. GIFFEN: Jack Giffen, Jr., tribal council.

13 MR. WEST: I'm Buddy West, tribal council.

14 MR. LENO: Reyn Leno, tribal council. Also board  
15 member for Spirit Mountain Casino.

16 MR. GREENE: Rob Greene, tribal attorney.

17 MR. HILLMAN: Lynn Hillman, executive director of  
18 the gaming commission.

19 MS. HARVEY: Denise Harvey, chair of the Grand  
20 Ronde Gaming Commission.

21 MS. KENNEDY: Well, we're here to respond to the  
22 proposed regulations that you're hoping to enact, to put in  
23 place. We've already gone on record in written form as well  
24 as talking with you, through previous settings like this,  
25 what our opinions are.

1 Just right up front, we oppose the changes that you're  
2 proposing. But if you do move forward, we want to have an  
3 exception as a self-regulated tribe. We have folks who are  
4 going to speak more directly to the detail of what you  
5 published. But we also do want to take some time to talk  
6 about our status as a self-regulated tribe and where that  
7 might eventually go. And we've had that discussion a little  
8 bit before, too, but we want to continue with that dialogue.

9 We want to spend some time talking about the licensing of  
10 the facility annually. It's something that we don't  
11 support, but we'll talk about that later.

12 So with that, I'll go ahead and turn this over to Lynn  
13 and to Lisa to go ahead and start the detail of what our  
14 comments are about.

15 MR. HOGEN: Thank you.

16 MR. HILLMAN: I'm Lynn Hillman, the executive  
17 director of the gaming commission. Phil, I believe you have  
18 heard this tribe's position on proposed Class-II standards  
19 since late 2003, with at least three written comments.

20 First of all, we'd like to acknowledge all the hard work  
21 NIGC has put into this. We understand you have a charge to  
22 do a very difficult thing, as to try to clearly identify  
23 what a Class-II game is and what a technological aid is.

24 However, Phil, you recall we're the only tribe that I'm  
25 aware of that has already implemented -- those standards



1       you're proposing today, we have already implemented. Over a  
2       year ago, when we first decided to put Class-II  
3       technological games in our casino, we saw a need to have an  
4       independent body help us determine if what the casino was  
5       purchasing is exactly what they're getting.

6       But the key, Phil, is the tribe has always retained the  
7       right that, after that independent lab made that analysis  
8       for us, the tribe, through the right granted by IGRA,  
9       determined whether it was a Class-II game or not. And this  
10      tribe's position is, by having the ability to retain the  
11      right to determine what a Class-II game is, is extremely  
12      important.

13      You're taking away from us the ability to have a lever in  
14      the negotiating position with the State. You're taking away  
15      from us the ability to continue with what we have already  
16      started.

17      And, Phil, we've had a pretty good track record with  
18      NIGC. And I believe you have seen, with our status as a  
19      self-regulated tribe, that we go above and beyond what is  
20      required of any other tribe. We understand and we  
21      know--we're realists--that with all the controversy going on  
22      in the last year with the McCain bill, the U.S. Department  
23      of Justice proposed additions to the Johnson Act, you're  
24      moving to try to clarify some Class-II standards.

25      We know there's going to be some changes. I mean, there

1 will be. And what we'd like to ask is, because of our past,  
2 because of our operation, because we have been responsible  
3 in what we're doing, if you decide to go forward to do this,  
4 we request that you grant us an exception to having  
5 requirements of an independent lab make those decisions for  
6 us.

7 We believe we must retain the right to make those  
8 decisions. Not saying that we wouldn't adopt your  
9 standards, but leave the decision as far as a Class-II game  
10 to the right of this tribe. So, Lisa?

11 MS. BLUELAKE: I'd just like to reiterate that we  
12 met not too long ago on ways that NIGC could recognize self-  
13 regulated tribes. And there's only, I believe, two in the  
14 country that have earned such a certificate. However, we  
15 don't think that's reason not to recognize tribes, such as  
16 Grand Ronde, that have gone through a lot of effort to get  
17 the recognition and to retain that recognition.

18 There have been subsequent regulations proposed that  
19 still don't have any recognition, and Cheryle Kennedy,  
20 chairwoman, mentioned facility regs which we have commented  
21 on. And these also haven't identified any particular  
22 exceptions for Class-II, self-regulated tribes, even though  
23 they are -- hit at the heart of Class II regulations.

24 And Mr. Hillman didn't mention them. We do have some  
25 concerns -- Cheryle mentioned them -- that the standards are

1 more restrictive than they need to be for classification  
2 standards and go beyond what IGRA requires, such as the  
3 timing requirements and the size-of-the-card requirements,  
4 and we include those in our written comments.

5 However, the process itself, we feel that there are some  
6 ways that you can recognize self-regulated tribes. One that  
7 Mr. Hillman mentioned is, instead of requiring the gaming  
8 laboratory or NIGC to certify the games, that the Commission  
9 would go ahead and still have the independent laboratory  
10 test the machines, to make sure they meet classification  
11 standards or that they are what the casino believes they're  
12 ordering. However, the gaming commission would make the  
13 determination of whether or not -- or make the certification  
14 decision rather than the independent gaming lab.

15 And then, in turn, instead of NIGC having veto  
16 authority -- which, the regs mentioned "objection," and that  
17 is true, but if your objection -- if it's not changed  
18 through subsequent interaction, then it turns out that the  
19 certification is null and void, which basically is a veto  
20 over the gaming-laboratory certification.

21 And what we would request is: When the gaming commission  
22 does the certification, if you have an objection, that the  
23 objection be equivalent to what -- the NIGC currently  
24 objects to the licensing decision, where you'll note to the  
25 gaming commission what your concerns are. And then the

1 gaming commission is responsible for taking another look at  
2 that. But ultimately, the decision still remains with the  
3 gaming commission and not with NIGC.

4 And we believe those are reasonable recognition pieces  
5 that you could build into the regulations. And we'll also  
6 mention those in more detail in our written comments. But  
7 that's all I had.

8 MR. HILLMAN: Phil, we understand that you're in  
9 this position today because some gaming operations kind of  
10 fudged. But we shouldn't be penalized for that. And we  
11 have always worked under not only your guidelines -- which,  
12 you folks come up with some pretty good standards every now  
13 and then. But we also come up with some good standards.

14 And with your past practice--from Penny, by the way--to  
15 provide us opinions and bulletins has really been a resource  
16 for us. It has been one of those things that we use to make  
17 our final decisions. And I believe our final decisions on  
18 the Class-II operation have been far above what your minimum  
19 standards are that you are currently trying to put into  
20 place.

21 So I guess we're asking for your consideration to  
22 recognize what we're doing and allow us to continue to make  
23 our own decisions.

24 And we also have some objections to some of your proposed  
25 standards. We believe they go far beyond what IGRA requires

1 and identifies as bingo. Bingo is a pretty simple game. It  
2 really is. There's only three standards by which IGRA  
3 requires bingo to be a game. And I fully understand  
4 technological aids can give the impression that you're  
5 actually playing against a machine and not another person.  
6 But if a gaming commission really does their job and is  
7 really held accountable, you can articulate that there are  
8 differences. So we just ask you for your consideration.

9 MR. HOGEN: Well, it would be useful to us to get  
10 a little better acquainted with the actions you have taken;  
11 and perhaps in what you've already sent to us, it might  
12 already be there in part, but if you can send that to us  
13 again or share some of that with us, that would be useful.

14 MR. HILLMAN: You know, Phil, I don't mean to  
15 interrupt you, but the first time we started this process --  
16 and I think many of you were part of it -- we had decided to  
17 purchase some machines of Sierra Design Group. They did not  
18 know how to respond to this tribe, because we were asking  
19 them to test this equipment to certain standards. They  
20 didn't know what to do. It worked out well. It took eight  
21 months, but it turned out well. So yes, we will.

22 MR. WEST: Buddy West, tribal council. This is  
23 relating to what Lynn said about the licensing. We work  
24 with one who does our testing, one lab. And my question is:  
25 You say in here that you're going to work with a lab that's

1 licensed. My question is: What are the standards for  
2 licensing and who will set those standards up and qualify  
3 the licenses?

4 MR. HOGEN: The NIGC would certify the labs whose  
5 test results we will recognize under this proposal. We  
6 would take into consideration a number of things that are  
7 mentioned. I expect our checklist would get quite a little  
8 longer when we got closer to actually having to do that, but  
9 we would address those concerns. Like, their experience,  
10 their qualifications, their financial stability, and things  
11 of that nature.

12 Do you have any comments, Penny, with regard to that?

13 MS. COLEMAN: As I remember, the regulations also  
14 can look to other established regulators, to see if they're  
15 licensed, and so that might be Grand Ronde; that might be  
16 Nevada, depending on where we can look; you know, whether or  
17 not that regulatory body has standards for themselves for  
18 certifying.

19 So we aren't going to necessarily make this up ourselves.  
20 There are already labs that are established and recognized  
21 by other regulatory bodies, to do certifications, to do lab  
22 work.

23 MR. HILLMAN: Penny, may I ask Bob to respond to  
24 that? Phil, please use caution. We do not license  
25 independent laboratories in Oregon for this purpose. If

1 they're licensed, they're no longer independent. If you  
2 license them, that means you have a vested interest in their  
3 outcome. If they remain independent, then you use their  
4 facilities, their expertise and knowledge, based upon the  
5 work they do, not because they're licensed.

6 Please use caution when you start licensing independent  
7 labs, because they lose their independence, and it could be  
8 inferred: Because Phil Hogen didn't like the way they came  
9 out and made their decision, now we're going to initiate  
10 disciplinary action. Perception only. So that's why we  
11 haven't done it.

12 MR. GREENE: Question for Penny. What do you  
13 think in terms of the number of labs that might be available  
14 for certification? I mean, what I've heard -- and you're  
15 probably doing a very small number that tribes could look  
16 to, that NIGC could look to, for certification of games. Do  
17 you have a sense, in terms of the numbers of potential labs  
18 that would be out there that we could go to?

19 MS. COLEMAN: Well, we know, of course, of the  
20 three major ones with which we deal. And we do anticipate,  
21 if these regulations go final, that there would be more of a  
22 need for labs and so that there will probably be others that  
23 will come into the forum.

24 I mean, there's other ones around that don't really have  
25 a big, established presence in the United States. We

1 anticipate that there might be a couple of tribes that might  
2 be interested in getting into this aspect of the business.  
3 And so we expect that there will be more than those three  
4 that we've been dealing with.

5 MR. GREENE: Would there be any special  
6 requirements -- you mentioned that there would be some from  
7 even out of the country. Would there be any special  
8 requirements of those labs to do business in the United  
9 States, to license machines, certify machines?

10 MS. COLEMAN: I guess it would have to have a  
11 location --

12 MR. GREENE: In the United States, so you have  
13 some jurisdiction over them.

14 MS. COLEMAN: Right.

15 MR. GREENE: That would be helpful, wouldn't it?

16 MS. COLEMAN: Right.

17 MR. HILLMAN: I believe you're probably referring  
18 to IBMM, who is housed out of Australia, but they have a  
19 Vegas office?

20 MS. COLEMAN: Right. There's certainly an example  
21 of a company that has got more of an established presence in  
22 Indian country than it had just a very few years ago.

23 MR. GREENE: Right.

24 MR. HILLMAN: You know, I kind of want to -- but,  
25 you know, you've got a lot of legal minds here. Don't



1 forget about us, on the ground level, that have to put all  
2 this stuff in operation, the people that have to put this in  
3 day-to-day practice based on legal rendering of proposed  
4 standards. Please consider the guy that's got to work with  
5 them, and don't make them so legally difficult that we can  
6 not only not interpret them, but we can't put them in  
7 application.

8 This isn't really a hard thing to do. It's pretty  
9 simple. But it can get real hard.

10 MR. CHONEY: That's one of the first things that  
11 we set out to do. When we came on the Commission in  
12 December of '02, Chairman Hogen said, one of the first  
13 things, that there's a blurring between Class II and Class  
14 III, and we need to clearly define that.

15 We started making some visits out in the industry. We  
16 went to Oklahoma, where basically, all the problems exist,  
17 and it's because of that blurry line. There's no line.

18 They asked us: "We want some regulations that we can  
19 understand"; you know, "where we don't have to contact our  
20 law firm or a lawyer, some where our commissioners can pick  
21 up the regulations, look at it, read it and understand it  
22 themselves without having to call their lawyer and get an  
23 opinion from them: Am I reading this right?"

24 So that's what we tried to do. For the record, I'm not a  
25 lawyer. So I'm the least common denominator here. So I

1       need to understand these before we can send it out.

2               MR. HILLMAN: You understand, being prior law  
3 enforcement, too, the more simple it can be, the less  
4 problem you're going to have. However, in Oklahoma, maybe  
5 some of the gaming commissions ought to take ownership of  
6 that issue rather than putting the burden on you folks; take  
7 ownership themselves and do it. But anyway...

8               MR. HOGEN: We, of course, assembled the Tribal  
9 Advisory Committee that had some really well-experienced  
10 operators and regulators. And often, during those heated  
11 discussions, some of us lawyers were brought down to earth  
12 with somebody saying: "How in the world are we going to  
13 deal with that? We'll have to do that 15 times a night.  
14 That will never work." And we got the message.

15              MR. HILLMAN: I think that pretty much completes  
16 our Class II. How are the comments coming on your proposed  
17 facility-agreement regulations?

18              MR. HOGEN: Why don't we talk about that for a  
19 moment? Unless there are other comments regarding the  
20 classification standards, we'll call this discussion  
21 concluded. We'll then go off the record.

22              MS. BLUELAKE: Before we do that, what is your  
23 time frame for having all of the comments entered and then,  
24 I guess, for your deliberation time and all that? What are  
25 you looking at?

1 MR. HOGEN: We've asked the written comments to be  
2 in by the 23rd of August. And we are going to Oklahoma, I  
3 think, for the last scheduled group of consultations like  
4 this. That will be the 8th and 9th of August, I believe;  
5 something like that.

6 There have been requests for a public hearing of the form  
7 that might bring manufacturers and others to participate,  
8 and we are considering that. If that occurs, I'm sure it  
9 will be after that session in Oklahoma.

10 And we will also be publishing, very quickly, very soon,  
11 these technical standards that we worked on with the  
12 Advisory Committee, that we've recently tried to make a  
13 little more modern.

14 So it could be we'll have a target date of getting the  
15 comments in on those a little further down the road than the  
16 23rd of August. But I am very hopeful that, early this  
17 fall, we will have all of that information together and  
18 we'll be able to publish the transcripts of the hearings.  
19 And if we are going to go forward with this after we hear  
20 all that is said, we will, sometime in September or October,  
21 get these regulations published.

22 MS. KENNEDY: Thank you.

23 MR. HOGEN: Thank you. We'll go off the record,  
24 then.  
25

(The consultation with the Confederated  
Tribes of Grand Ronde concluded at 3:05 p.m.)

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## A P P E A R A N C E S

For the Tohono O'odham Nation:  
P.O. Box 22887  
Tuscon, Arizona 85634

Ora Campilla, Executive Director  
Julia Corty, Compliance Manager  
Jean Torres, Vendor License Coordinator

(The consultation with the Tohono O'odham  
Nation began at 3:48 p.m.)

1 MR. HOGEN: Good afternoon and welcome, on behalf  
2 of the National Indian Gaming Commission, to this  
3 government-to-government consultation session. I'm Phil  
4 Hogen, chairman of the Commission. Chuck Choney is the  
5 other member of the Commission here, seated beside me.

6 Our acting general counsel is Penny Coleman, who is here  
7 along with attorney Michael Cox (sic) and John Hay, from our  
8 Washington office. And from the Portland office, our chief  
9 of accounting -- or auditing is Joe Smith, who is seated  
10 here next to Randy Sitton, who is the Northwest regional  
11 director. Most of the tribes we've conferred with are from  
12 the Northwest, but Joe will stick around for this one as  
13 well.

14 And then we've got Mark Phillips and -- I missed their  
15 names several times here -- Gary Peterson; and Alan  
16 Phillips, from our Sacramento office. These folks are  
17 helping us with these proposed regulations.

18 We are convened here in Tacoma, on July 24, 2006,  
19 pursuant to proposed regulations the National Indian Gaming  
20 Commission published in the Federal Register on May 25th,  
21 dealing with proposed standards that the Commission might  
22 use to better distinguish between equipment that can be used  
23 for uncompacted Class-II gaming and Class-III gaming that  
24 requires compacts.

25 So having said that, we would like you to introduce

1 yourselves and tell us how you are affiliated with the  
2 tribe's gaming operation, and then we'd very much like to  
3 hear your comments on our proposals.

4 MS. CAMPILLA: Hi. My name is Ora Campilla, and  
5 I'm the director for the Tohono O'odham gaming office out of  
6 Tucson, Arizona. With our tribe, Tohono O'odham, we do not  
7 have a gaming commission, so my job is the commission. I do  
8 have staff that could not leave the reservation, as well as  
9 compliance, and audits, and my inspectors. Our tribe is an  
10 amalgamation. I'll let the people introduce themselves.

11 MS. CORTY: My name is Julia Corty, and I'm the  
12 compliance manager and an attorney for the gaming office of  
13 the Tohono Nation.

14 MS. TORRES: And I'm Jean Torres, and I'm vendor  
15 license coordinator for the gaming office.

16 MR. HOGEN: Thank you.

17 MS. CAMPILLA: Okay. Thank you for taking us. I  
18 know it's last-minute. We went ahead and scheduled  
19 ourselves here today to present -- or to make comments to  
20 the proposed regulations. And we do agree that it is  
21 needed, to get some clarification on the distinction between  
22 the two.

23 I also understand technology takes over. And as I went  
24 through the regulations, there was questions and concerns  
25 that I would have in reference to technology. And I'll give

1       you an example on a couple of standards that we have  
2       adopted, which is the same as the NIGC, through the State of  
3       Arizona, is that, when we have a standard for the draw,  
4       where we do not deal with coins, we deal ticketless -- we're  
5       ticket in, ticket out.

6       But yet there are standards there that state that we  
7       should have -- if a technician wants to go into a slot door,  
8       the bucket area, we have to have two individuals to enter  
9       into the area. But now, with technology, we do not utilize  
10      that as a secured area, because we have the bill, etcetera,  
11      that we need to be more concerned about. That isn't where  
12      the currency is; that is where the tickets is located.

13      So therefore, we have a problem where the techs want to  
14      keep the key on their ring. And we say no, because the  
15      standard is so specific. So now we have to get a waiver to  
16      address that. And that, we see as technology. Technology  
17      has taken over with that standard, and now we have to move  
18      forward.

19      And that's what I don't see here. How are we going to  
20      address technology in the future? As we all know, the  
21      industry is moving very quickly, and we have to address  
22      that.

23      I also see in here that -- and I would like to emphasize  
24      that it is the tribe's responsibility to regulate. We are  
25      to regulate. So I feel that the proposed regulations you



1 have here should give more technical standards. What is it  
2 that you want, so we can have someone independent to look at  
3 it, and then let us go out and regulate. Because, right  
4 now, what I see are standards, are regulations that you are  
5 imposing on the tribe. We cannot regulate. So I want to  
6 see more of the technical aspects of it.

7 I believe the technical aspect should be what you, as  
8 members of the Gaming Commission, should come forward with.  
9 Then we can get the independent body. Because I think it's  
10 important to have someone independent to test.

11 And the other part of it is, I have some concern where  
12 one of the regulations states that NIGC has the authority.  
13 If they disagree with the independent body, you have the  
14 final say. And my question is: When you object, what  
15 criteria is going to be utilized, if we object to that  
16 standard? Because that's the final, as I understand it,  
17 regulation, as proposed.

18 Let me turn it over to Julia. She'll have some comments,  
19 and I'll have more comments after that.

20 MS. CORTY: I actually have a question about  
21 something that you have here on the Federal Register. It  
22 has to do with criminal jurisdiction, and there's a  
23 statement that says, "NIGC exercises regulatory authority  
24 over Class-III gaming. Under IGRA, the United States  
25 Department of Justice and U.S. Attorneys possess exclusive

1 criminal jurisdiction over Class-II gaming on Indian land  
2 and certain civil jurisdiction over such gaming."

3 So my question is: What aspects of gaming on Indian  
4 lands do you feel that the U.S. Attorney has exclusive  
5 jurisdiction?

6 MR. HOGEN: Well, the Johnson Act is based on  
7 federal law, found in Title 15, that says gambling devices  
8 are illegal in Indian country. Read in isolation, that  
9 would seem to prohibit a lot. But, of course, the Indian  
10 Gaming Regulatory Act says that there's an exception to that  
11 prohibition if there's a Tribal/State compact.

12 And the Act also says that tribes may use technologic  
13 aids to do Class-II gaming for which they have no compact.  
14 So I think that would identify the area that -- an area  
15 where U.S. Attorney/federal gambling law would apply in  
16 Indian country.

17 There are other provisions, such as the Wire Act and  
18 other gambling federal statutes, that have application  
19 everywhere, including Indian country. So I think that was  
20 the point we were trying to make in that section of the  
21 preamble.

22 MS. CORTY: So it wasn't your routine kinds of  
23 criminal acts, like an assault that occurs in a gaming area,  
24 or something of that nature?

25 MR. HOGEN: Well --

1 MS. CORTY: Or more run-of-the-mill criminal  
2 action.

3 MR. HOGEN: There's, of course, Public Law 280  
4 that has been applied to a number of states and adopted by  
5 others, that transfers criminal jurisdiction, in Indian  
6 country, over Indians, to states.

7 MS. CORTY: Yeah, right.

8 MR. HOGEN: If that's not the case, why, then, the  
9 Major Crimes Act that would apply to felony-level offenses,  
10 such as aggravated assault, assault resulting in striking,  
11 beating, and wounding, things like that -- there would be  
12 federal jurisdiction there.

13 MS. COLEMAN: Also there's the part of the Federal  
14 Indian Gaming Regulatory Act that is the criminal section.  
15 And so if there isn't a Tribal/State compact, well, then,  
16 federal law assimilates state law with respect to gambling.  
17 And then the United States -- the Department of Justice/the  
18 U.S. Attorney has exclusive criminal jurisdiction over any  
19 gambling on top of that.

20 MS. CORTY: So you would not agree that the tribes  
21 would have concurrent jurisdiction in those cases; the  
22 tribes could not still prosecute those cases in Tribal  
23 court?

24 MR. HOGEN: I would agree that they would, if  
25 over -- not over Indians.

1 MS. CORTY: Right. Right. Regular Indian  
2 criminal jurisdiction.

3 MR. HOGEN: But the penalties they could impose,  
4 of course, are limited; basically, a misdemeanor.

5 MS. TORRES: One year or \$5,000.

6 MS. CORTY: Okay. I just wanted to clarify that.

7 MS. CAMPILLA: Then again, the State of Arizona,  
8 we're a little unique. We have a memorandum of agreement  
9 with the U.S. Attorney to prosecute some of the crimes that  
10 do occur within the casinos, so it's just a matter of hiring  
11 that individual.

12 And we have a good working relationship with the other  
13 Department of Gaming, so we feel that we really have been  
14 moving forward to try to address some of those issues,  
15 because we are just as concerned, because a lot of the  
16 incidents that do occur are not being prosecuted, either --  
17 not our tribal members.

18 And then, you know, we, as the regulator, will get  
19 accused because -- prosecuting tribal members, because I  
20 could do it in tribal courts, but for non-tribals, it  
21 doesn't -- sometimes it doesn't go anywhere. And that's  
22 where I run into issues with our tribal council.

23 The other thing is that, because the State of Arizona --  
24 we have what we call Appendix A, which is our technical  
25 standards. And in there is the stipulation that we're going

1 to negotiate every five years as technology is moving. My  
2 recommendation is that term be shorter, being able to  
3 process in the time it takes. But again, I just have to  
4 refer back to technology is just constantly moving. We  
5 don't want to get hit, because of all the technology, we  
6 cannot move forward.

7 But on the other hand, I understand it is a standard for  
8 bingo, and we do have a small property on our western part  
9 of our reservation that has 40 machines. And I didn't see  
10 anything here that -- do we grandfather those particular  
11 machines, or how do we address those? Or is that going to  
12 come at a later time? Because, right now, we do deal with  
13 Bally's.

14 MR. HOGEN: The plan, as proposed in the set of  
15 regulations we're discussing, would require that all  
16 devices, electronic player stations for bingo and so forth,  
17 used for Class-II gaming, be certified under the procedure  
18 in the regulations; that is, they would be -- that model  
19 machine would be submitted to the gaming laboratory, and the  
20 gaming lab would issue an opinion, hopefully, that it did  
21 comply with the regulations.

22 Of course, if they said it didn't, then that would be  
23 problematic if you then use it. So if you have equipment  
24 that's in play now, during this phase-in period, that would  
25 need to be sent to the lab, or get a lab report that would

1       apply to that type of machine.

2               MS. CAMPILLA:   Okay.

3               MS. COLEMAN:   Can you tell us a little bit more  
4       about your machines that you're playing, the Class-II  
5       machines?   Are those one-touch games or --

6               MS. CAMPILLA:   Yes, they are.   I have no  
7       progressive.   I have no bonusing.   They're just single-touch  
8       games.   And we have -- we have 40 machines.   Like I said, in  
9       the State of Arizona, our compact limits us to 40 per tribe.  
10      So the western part of our reservation, we have what is  
11      called Golden Hasan Casino, and that's a total Class-II  
12      facility.   And it's just a one-touch.

13              If we have one player there and they want to get on the  
14      machine, it's automatically hooked up to outside, to the  
15      central base.   And then that's how they get a second player.

16              MS. COLEMAN:   So it's automatically hooked to  
17      other tribes--

18              MS. CAMPILLA:   Yes.   Yes.

19              MS. COLEMAN:   --if there's only one person in  
20      there?

21              MS. CAMPILLA:   Yes.   It's hooked up to the central  
22      base.

23              MS. CORTY:   I had a question about the -- I'm  
24      looking for the section that talks about the bingo-card  
25      display and the Commission wanting it to be the equivalent

1 of half of the screen display. And I just wanted to ask how  
2 you came to that -- kind of, to that figure, that it should  
3 be half of the screen display?

4 MR. HOGEN: Well, I guess we took, from the Indian  
5 Gaming Regulatory Act and its legislative history, the  
6 intent that there be a distinction between Class II and  
7 Class III and that it be a recognizable distinction.

8 Now, we understand that machines will be built so they  
9 give some of the thrill that one might have playing a  
10 Class-III slot machine when you are playing some of these  
11 interconnected Class-II games. For example, having displays  
12 that look like slot-machine reels that really only  
13 communicate whether you won or lost.

14 And if that becomes so dominant that you lose the idea  
15 that it's a bingo game, we would have a concern about that.  
16 So we decided that an appropriate proportion would be half  
17 bingo, half bells and whistles, so to speak.

18 MR. GROSS: Mr. Chairman, did you want to address  
19 Director Campilla's concern about technical standards?

20 MR. HOGEN: Yeah. Thank you. I'm glad you  
21 reminded me of that, Michael. When we formed our advisory  
22 committee and drafted what led to these classification  
23 standards, we also drafted a really good set of proposed  
24 technical standards. We did that in two versions, published  
25 them both on our Web site.

1 And when the time came for us to roll out these  
2 classification standards, we realized, just as you had  
3 observed with respect to technology moving on, that they had  
4 gotten a little stale. So we're trying to modernize them,  
5 to take advantage of some recent changes in technology, and  
6 we'll be publishing those very soon. And hopefully, if and  
7 when we adopt classification standards, we can adopt a set  
8 of technical standards at the same time.

9 With respect to allowing tribes some discretion here and  
10 keeping responsibility for tribal regulation with tribes,  
11 tribes certainly will have a significant role here, and they  
12 will be part of the implementing process.

13 IGRA created the National Indian Gaming Commission and  
14 said that, among other things, we should promulgate some  
15 federal standards. They said tribes could do Class-II  
16 gaming using technologic aids, but they said if you use  
17 electronic facsimiles of games of chance, that becomes Class  
18 III. And they didn't say a lot about exactly where you draw  
19 the line between the two. And we think that that's probably  
20 an area where we need to step up to the plate and promulgate  
21 a federal regulation.

22 And we want to respect tribal discretion and unique  
23 requirements of tribes, but we think this is an area where a  
24 single federal standard needs to be the starting place, and  
25 tribes then could build on that. And so that's, you know,



1 where we are and why we took the position that we did.

2 MS. CAMPILLA: And, again, just to let the  
3 Commission know that we do license not only our Class-III  
4 vendors, but also Class II, so we do license Bally's in  
5 particular, for Class-II gaming devices. And when we first  
6 opened up our property, that was one of the concerns we had,  
7 was what do we go back to, to look at, to say: "Okay, is it  
8 Class II or is it Class III?" You know, "Is it going to  
9 count against our Arizona count, or can we have that stand  
10 alone?"

11 And there were numerous meetings that we also had a  
12 chance to get comfortable with saying: "Yes, those are  
13 Class-II gaming devices."

14 MR. HOGEN: You mentioned the compact structure  
15 and the games that you have. I think I understand that  
16 compact provides that each tribe can have, in addition to  
17 compacted games, 40--

18 MS. CAMPILLA: Yes.

19 MR. HOGEN: --Class-II games.

20 MS. CAMPILLA: Yes.

21 MR. HOGEN: Do you know, just from your experience  
22 in Arizona, how many of the tribal gaming facilities have  
23 that full complement of 40 machines?

24 MS. CAMPILLA: I believe Fort McDowell did have  
25 them at one time. I'm not sure if they're up at the 40.

1       Because I know they've been doing a lot of renovations  
2       within their property, and I believe they took some out to  
3       put in Class III.

4       But right off, no, I don't. I think we're one of the  
5       only tribes, perhaps, that do have 40 machines up and  
6       running as a Class-II property.

7               MS. CORTY: I wanted to see if I could switch  
8       gears to one of the land issues.

9               MR. HOGEN: Okay. Well, I think, then, we will  
10      bring to a conclusion the classification discussion and tell  
11      the reporter that the rest of this will deal with a unique  
12      issue and need not be on the record.

13  
14                       (The consultation with the Tohono O'odham  
15                       Nation concluded at 4:07 p.m.)  
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## A P P E A R A N C E S

For the Stillaguamish Tribe of Indians:  
3439 Stoluckquamish Lane  
Arlington, Washington 98223

Jhan Smith, Gaming Commission Director  
Kevin Parker, Director of Gaming  
Shana Swanson, President, Enterprise Corp.  
Trisha Pelor, Secretary, Enterprise Corp.  
Edward L. Goodridge, Sr., CEO, Economic  
Development

(The consultation with the Stillaguamish  
Tribe of Indians began at 4:42 p.m.)

1 MR. HOGEN: Welcome. I'm Phil Hogen, chairman of  
2 the National Indian Gaming Commission. Commissioner Chuck  
3 Choney and I currently constitute the Commission. And we  
4 have staff with us that have helped formulate the proposals  
5 that we've submitted. Penny Coleman is our acting general  
6 counsel. Michael Gross is an attorney in her office, as is  
7 John Hay, at the end of the table.

8 From our Portland office, we have Rayanne Morris, who is  
9 actually up in Bellingham, and our regional director, Randy  
10 Sitton. And Natalie Hemlock is an assistant to the  
11 Commission in D.C. We've got Alan Phillips, who is with our  
12 Sacramento office, who helped us with these regulations.

13 We're here pursuant to publication in the Federal  
14 Register, on May 25th, of a set of regulations or  
15 definitions relating to the difference between Class-II and  
16 Class-III gaming and some proposed standards relating to  
17 equipment that could be used for Class II.

18 So having said that, would you please introduce  
19 yourselves to us and tell us what capacity you serve in  
20 terms of gaming or the tribal government so the reporter can  
21 know who it is that's speaking. And we'd be very interested  
22 in hearing your comments on these proposed regulations.

23 MR. SMITH: I'm Jhan Smith. I'm the director of  
24 the Stillaguamish Gaming Commission.

25 MR. PARKER: I'm Kevin Parker, the director of

1 gaming for the Stillaguamish.

2 MR. GOODRIDGE: I'm Edward Goodridge, Sr. I'm the  
3 chairman of the Enterprise Board.

4 MS. PELOR: Trisha Pelor, secretary of the  
5 Enterprise Board.

6 MS. SWANSON: Shana Swanson. I'm the president of  
7 the Enterprise Board. And Kevin was actually going to do  
8 most of the speaking for us, as director of gaming.

9 MR. PARKER: All right. Mr. Chairman, what we're  
10 going to do, is we're going to go over some significant  
11 points. We've got them written down in a point paper. If  
12 there's any questions as we're going along, we're fairly  
13 informal folks. Just interrupt. We're fine with that.

14 First off, I thought I'd give you some tribal statistics.  
15 The Stillaguamish Tribe has 192 members. Tribal members  
16 employed by the tribe is 27, plus three descendents. The  
17 tribe operates a single casino, the Angel of the Winds  
18 Casino. It has more than 425 Class-III slots. Those are  
19 VLT, central determinant, in the State of Washington; 12  
20 table games and 90 Class-II bingo terminals.

21 "Our duty in regard to operating a casino for the  
22 Stillaguamish tribe is relatively easy to describe. The  
23 overall defining trait of a casino is uncertainty. What  
24 makes a casino viable is that uncertainty. If a player knew  
25 he was going to lose, he wouldn't gamble. The possibility

1 of winning and wagering on fun and exciting games brings  
2 players in the door. Our job is to manage that uncertainty.

3 "We manage uncertainty by using tools and data at our  
4 disposal to make informed decisions. We are bound by the  
5 rules and regulations imposed by the state and federal  
6 government to ensure the product that we turn out, which is  
7 responsible adult entertainment in the form of games of  
8 chance, is both profitable and legal.

9 "In establishing the internal control procedures that  
10 govern gaming at Angel of the Winds Casino, we followed all  
11 the policies and procedures established in our Tribal/State  
12 compact, our Tribal Gaming Ordinance, and those rules and  
13 regulations establish by the NIGC and the State of  
14 Washington regarding Class-III gaming. Additionally, we  
15 followed all prescribed rules set forth by NIGC regarding  
16 the use of Class-II technological aids to the game of bingo.

17 "We utilized only vendors who had achieved recognition  
18 for their games or devices through the NIGC in the form of  
19 game-classification opinions issued by the Office of the  
20 General Counsel. Further, the updated system that we are  
21 now utilizing has also been approved as a Class-II game  
22 through a different but similar classification opinion  
23 issued by the NIGC. The proposed rules outlaw even the  
24 Class-II electronic bingo games previously approved by the  
25 NIGC. In fact, not one single electronic Class-II bingo

1 game approved by the NIGC since IGRA was enacted would be  
2 legal under the proposed regulations. Now, should these  
3 changes in the Federal Register become binding, our tribe  
4 will be out of compliance for following all of your previous  
5 policies to the letter."

6 I think that's extremely important for us. We wanted to  
7 play by the rules. We wanted to do exactly what it was that  
8 you folks wanted us to do. I think it's great for the  
9 tribe. You are our voice. We want to follow what you do.  
10 But now, in following all of your rules, we found that we're  
11 out on a limb.

12 "Further, there is no true grandfather clause allowed for  
13 systems of games that followed your previous rules. This  
14 tribe, along with all other tribes utilizing Class-II games  
15 in a legal and responsible manner, will be penalized for  
16 doing the right thing. Can the esteemed members of the  
17 Commission please help me to explain this to our tribal  
18 elders? We have yet to explain it to them because this  
19 isn't law yet."

20 All right, this is a proposed rule, so we haven't gone  
21 that far. But our tribal elders, they're not going to  
22 understand this. And it's not because they don't  
23 understand. It's because a promise was made, and they kept  
24 their end of the promise.

25 "What does worry our tribal council however is this

1 Commission's disregard of tribal comments in drafting these  
2 rules. In your own preamble, you state that tribes strongly  
3 disagreed with the decisions made by the Commission  
4 regarding autodaubing, time delays, and the advocating of  
5 authorizing wholly electronic pull-tab games, as well as the  
6 tribes asking that no changes to the rule definitions to  
7 'electronic or electromechanical facsimile' of a game of  
8 chance be made. Further, your preamble states that the  
9 Commission is bound by Congress's intent, as expressed by  
10 IGRA, to promulgate rules that clearly distinguish  
11 technologically-aided Class-II games from 'electronic or  
12 electromechanical facsimile' of a game of chance. The group  
13 of representatives before you are not attorneys and  
14 therefore hesitant to raise an issue questioning a legal  
15 opinion. That being said, can you identify the basis in  
16 IGRA that states that Class II must be distinctive?"

17 I ask that because I couldn't find it. And, of course,  
18 I'm not a lawyer. I'm just a gaming guy. But I'd love to  
19 -- I read -- I went over every decision, I went over the  
20 Seminole decision. I went over MegaMania. I went over all  
21 of them. I went over the -- I went over all of your  
22 documents. I couldn't find it.

23 "Equally troubling to the Stillaguamish Tribe is an  
24 apparent attempt by the Commission to institute an  
25 administrative reversal of judicial decisions. Again, we're



1 not attorneys, but it is our belief that federal law cannot  
2 be reversed through the rulemaking process. In recent  
3 years, tribes have won important victories before the Ninth  
4 and Tenth Circuit Court of Appeals in relation to the linked  
5 electronic bingo games. These cases made clear that the  
6 tribes are not limited to 'traditional' bingo games and  
7 confirmed that the Class-II games can be both fast and  
8 profitable.

9 "We, the representatives of the Stillaguamish Tribe, do  
10 not view this meeting as a government-to-government  
11 consultation." We don't want anyone to take that as a  
12 slight. "We believe that the Commission is not following  
13 its own NIGC policy-making principles and guidelines, as  
14 defined in the National Indian Gaming Commission  
15 Government-to-Government Tribal Consultation Process, which  
16 was published in the Federal Register on March 24th, 2004.  
17 This, in part, states, 'To the extent permitted by law, the  
18 NIGC will engage in regular, timely, and meaningful  
19 government-to-government consultations and collaboration  
20 with federally recognized tribes when formulating and  
21 implementing NIGC administrative regulations, bulletins, or  
22 guidelines, or preparing legislative proposals or comments  
23 for Congress which may substantially affect or impact the  
24 operation or regulation of gaming on Indian land by tribes  
25 under the provision of IGRA.' We believe that, in order to

1 have meaningful consultation between our governments, the  
2 following must be recognized pertaining to this situation."

3 As far as the consultation process: "The time line is  
4 inadequate to prepare comment, especially in light of the  
5 fact that the technical standards" were just released this  
6 weekend. "The technical standards and classification  
7 standards should be viewed together in order for each tribe  
8 to determine the entire package of regulations presented."

9 I now have 30 days, a little over that now--well, maybe a  
10 little under that--to go ahead and make heads or tails of  
11 what we have and to formulate our letter to you folks before  
12 the deadline to be able to get you some meaningful comment  
13 in from our tribe. And that's very difficult for us to do.

14 I mean, again, it's not you don't write well; you do.  
15 The problem is we're also all running businesses. We're  
16 running a casino, we have staffs, and it's very difficult.  
17 I spend the majority of my evenings going over the NIGC's  
18 documents, which are well written.

19 "A public hearing is needed to fully address all of the  
20 issues."

21 Going back to the technical standards, "The standards and  
22 classifications should be viewed together in order for each  
23 tribe to determine the entire package of regulations  
24 presented. The classifications standards should not expire  
25 until after the publication of the technical standards and a

1 sufficient review period." We would ask that a review  
2 period was longer than what we have.

3 "If a public hearing were to be scheduled, proper time to  
4 prepare comment is needed to review the entire regulatory  
5 package, and include the technical, classification, and the  
6 definitions. Until a meaningful and collaborative  
7 consultation process is developed, meetings held by the NIGC  
8 are merely comment sessions. Consultations need to be held  
9 in a variety of geographic locations with the affected  
10 tribes."

11 Now, for this, this is a wonderful spot; the State of  
12 Washington. My tribe is in the State of Montana. Before  
13 Denver was canceled, Denver would have been where they went.  
14 I can't speak for anyone else's tribe. I can speak for  
15 mine. And I apologize for speaking for my tribe, but my  
16 tribe is out in the boondocks. It's very difficult for an  
17 economically challenged tribe to get to another place and to  
18 bring all the people together --

19 MR. CHONEY: Which tribe is that?

20 MR. PARKER: I am from Box Elder. I'm the  
21 Chippewa Cree.

22 "The invitations for consultations must be made earlier,  
23 with procedures for confirmation clearly described." Here's  
24 something we didn't know, and Ms. Hemlock was wonderful  
25 about it. She helped us out. We didn't know, nor did most

1 of the other tribes, at least in this area, that we need to  
2 confirm our appointments.

3 Now, our appointment -- I'm glad we did. Our appointment  
4 hadn't been made yet, so Ms. Hemlock got me in, but as far  
5 as some of the other tribes, they weren't able to get in,  
6 because of the consultations. I believe you've done that in  
7 Washington, D.C., and had some meetings that were canceled  
8 there. We'd like to know how the public record is being  
9 made and disseminated regarding this issue.

10 "Based on conservative projections, tribal governments  
11 stand to lose over \$1 billion of revenue a year under the  
12 proposed rules. There are approximately 50,000 Class II  
13 electronic game stations in use by tribes today, generating  
14 over \$2 billion annually. That means the prime source of  
15 funding for Tribal governmental programs will be almost cut  
16 in half."

17 Our tribe is in a unique situation. Before the casino  
18 was put -- well, the genesis of the casino by Ed -- some of  
19 our licenses from the State of Washington were leased out to  
20 pay for Tribal social services; 250 of ours. In the State  
21 of Washington, you get 675 Class-III licenses. That left us  
22 425 left. Now, that 425, we've got up and running.

23 We followed all the rules. We got through all of our  
24 certification process. And the only way that we could  
25 expand after that point and give meaningful economic change

1 to the tribe was to add Class-II games. I think we are  
2 still 18 months out before -- or somewhere short of that,  
3 but just short of that in order to get those licenses back.

4 "Economic impact: How is the NIGC determining the  
5 financial impact of these proposed regulations? Of  
6 importance to our tribe, what about the impact on our  
7 capital equipment? Has the Commission taken into  
8 consideration what impact these changes will have on the  
9 contractual obligations of each tribe? We just" -- and I  
10 mean just last week -- "refinanced an \$11 million debt that  
11 we have with a major lender in Indian country, based in  
12 large part on the profitability of the Class-II machines  
13 within our facility."

14 Our Class II machines outperform our Class-III machines  
15 because, in the State of Washington, there are limitations.  
16 We have no cash in the machines, we have no wide-area  
17 progressive; and, on the Class-III side, the vendors up here  
18 do not offer multi-denominational games. All of those, we  
19 can find through our Class-II games. They are very  
20 important. They outperform our Class-III machines, and  
21 they've been a wonderful addition to the facility.

22 "Your proposed rule change will result in lower revenues  
23 for our facility which will in turn invalidate the ratios we  
24 must maintain for compliance with our loaners." That is  
25 very, very important, because, I mean, our ratios are down

1 to the nut, and, I mean, it's -- it's very difficult in a  
2 situation out there now, where a tribe goes out to get  
3 money, they don't have a lot of collateral. What they have  
4 is their name, they have the fact that they can game, all  
5 right?

6 Now, folks will lend you money, but the ratios that you  
7 must maintain in order to do this are very, very, very  
8 tight. And I -- I don't know. I'm sure some of you have  
9 tribes in your own jurisdictions and -- but I don't know  
10 that you have a tribe in yours, sir -- or if your tribe has  
11 a casino, but those ratios are very tight. Our ratios are  
12 based on the productivity of these machines.

13 MR. GROSS: Excuse me for interrupting,  
14 Mr. Parker. What are the consequences for the loans if the  
15 ratios aren't maintained?

16 MR. PARKER: Shana?

17 MS. SWANSON: The consequences?

18 MR. GROSS: Mm-hm.

19 MS. SWANSON: I'm not even sure on that. I know  
20 that we end up defaulting on the loan if we can't pay it  
21 back, obviously.

22 MR. GROSS: Right, but that may be different. An  
23 event of default may be a different thing than not  
24 maintaining an earnings ratio.

25 MS. SWANSON: If we don't maintain the ratio, I

1 believe that we end up at a higher interest percentage, and  
2 I believe it at least doubles? Is that not what that --

3 MR. SMITH: It's usury rates.

4 MR. PARKER: What we have for our facility is we  
5 have a waterfall account. Because of so many defaults in  
6 Indian country already, we go through the depository. All  
7 of our money is sent into the depository, and that trickles  
8 down. Each loan -- construction loans, the regular loan,  
9 any additional side loans are all paid off before the tribe  
10 ever sees any money, okay? We're -- and before we can  
11 maintain our operating cash, because our operating cash  
12 comes in after that. That's very important.

13 It will, in the long term, without viability of these  
14 machines, cripple this casino, in the way that we are right  
15 now. And we're not a big casino. I mean, it's a small  
16 casino, it's off the road. But it's a nice casino.

17 "Currently, in the State of Washington, Class-II games is  
18 the only opportunity for growth in Indian gaming. Without  
19 the opportunity to install Class-II machines to meet market  
20 demand, Indian gaming will suffer at the expense of Tribal  
21 services."

22 There's also been no impact study that I could find to  
23 determine the true impact on Tribal gaming facilities or in  
24 the Tribal communities' dependence on it.

25 "Has the Commission fully evaluated the cascade effect on

1 tribal services and tribal businesses? Many tribal  
2 businesses and tribal services have been made available  
3 through the revenue streams provided by the tribes' casinos.  
4 Currently, our Class-II machines make up 18 percent of our  
5 total floor. Should the economic viability of these  
6 machines be removed, it would fully affect 25 percent of our  
7 facility's revenue stream. Add to this the projected  
8 impacts on the neighboring economy, utilizing a local  
9 multiplying effect, and the total impact of our small  
10 facility and the surrounding communities is frightening."

11 Let me explain that. It's just basic economics,  
12 macroeconomics. It's Keynesian theory.

13 If we take \$185 win per machine per day we currently  
14 enjoy on our Class II machines, we times it by the 90  
15 machines we have and 365 days a year, you come out with  
16 \$6,077,250. Using a local multiplier, according to  
17 Keynesian theory, we can assume that \$10 generated by the  
18 Class II machine in our facility will create \$40 in total  
19 income to the local economies. That's the city of  
20 Arlington, that's Marysville, Stanwood, some of these  
21 smaller towns that are around there.

22 "So by using this multiplier, the local communities can  
23 expect to see a substantial decrease in the \$24,309,000 that  
24 these machines add to the local economy." Because these  
25 machines weren't there before, and that's very important



1 with this Keynesian theory, is that we have introduced  
2 something that wasn't there before, right?

3 It's a new trade, it brought new dollars into the area.  
4 Those dollars have a trickle-down effect where they're used.  
5 Our employees take them, they take them out to businesses,  
6 those businesses pay their bills with them, so there's a  
7 wonderful multiplier effect.

8 "Who is going to explain to my tribal council, should  
9 this policy change be implemented, that we are out of  
10 compliance with the NIGC even though we followed all the  
11 rules and regulations imposed by the NIGC? We utilized  
12 equipment classified as Class-II devices by the NIGC and  
13 used a company recognized as a Class-II vendor by NIGC."

14 As important, "Who is going to pay for the modifications  
15 that we'll have to make in order to follow these changes?  
16 Why are the NIGC-mandated changes the fiscal burden of the  
17 Stillaguamish Tribe of Indians when we followed all of your  
18 current policies and procedures? The vendor cannot bear the  
19 cost of these changes and will pass the cost on to this  
20 tribe as well as every other tribe utilizing Class-II gaming  
21 devices."

22 I don't suppose the federal government is going to bear  
23 the cost. I think that's probably an option, but the  
24 changes that you're proposing cost a lot of money, all  
25 right? That's money that we feel can be better spent, if we

1 can help to enact some change -- are better spent towards  
2 our social-services programs within the tribe.

3 "While the proposed rule would not prohibit the use of  
4 electronics in Class-II games altogether, the permissible  
5 games will be exceptionally slow, less esthetically  
6 pleasing, less enjoyable, and far less appealing to players,  
7 making these games dramatically less profitable than the  
8 current Class-II games."

9 We know that the proposed regulation -- I guess I can  
10 get into it a little more fully later on. Being a gaming  
11 person -- okay, I'm not an attorney, but I am a gaming  
12 person. There's some things that I just don't understand  
13 about these rules.

14 For one thing, autodaub. 10 seconds in between spin.  
15 Does anybody not -- I mean, truly not believe this will  
16 cripple Class-II gaming? Because it will. I mean, and just  
17 to see that -- you can walk out there and watch those  
18 players hit that button (demonstrating) -- they do it. I  
19 mean, they want to play the game.

20 Now, in our facility, we promote the fact that these are  
21 bingo games from the rooftops. We even have a little  
22 section set aside for our Class-II vendor, which happens to  
23 be Rocket, which is -- we've got Rocket game systems up on a  
24 wall. Everything that we've got shows they're bingo games.  
25 And why? Because they have advantages that the Class-III

1 games in the State of Washington do not have.

2 So I don't think that there's a problem here, at least  
3 not in the State of Washington, as far as anybody trying to  
4 dupe the customers out of not letting anyone know that these  
5 are Class-II games.

6 We let them know fully. We show them the bingo patterns.  
7 We show them how to scroll through the bingo patterns. We  
8 feel that that's very important. We also feel that it's  
9 really an incentive to the players to play those games.

10 "These new regulations impose certification, by NIGC, of  
11 Class-II games before they may be placed on the floor as  
12 well as certification by a testing lab, which must also be  
13 certified by NIGC. This slows the tribe's ability to get  
14 these new machines and/or new game titles onto the floor.  
15 What makes the NIGC feel that, because a game is fun and  
16 exciting for the players and profitable to the tribes, it  
17 must be a Class-III device? We urge the NIGC to stop  
18 attempting to define Class-II games by what it isn't and set  
19 the definition by what it is. What is a game of bingo?

20 "A game of bingo or other games similar to bingo consists  
21 of the random draw or electronic determination of numbers or  
22 other designations; the release of sufficient numbers or  
23 other designations to form the predesignated game-winning  
24 patterns on a card held by the winning player; and the  
25 players competing against each other, and not the house, to

1 cover the numbers or other designations on their cards when  
2 they are released.

3 "A game ends when the player claims the winnings after  
4 obtaining and daubing the game-winning pattern and  
5 consolation prizes being awarded for the game."

6 That's how we interpret what bingo is, not what Class-II  
7 isn't. And I think that's the important thing. There are  
8 some vendors out there that are doing the wrong thing, and  
9 we realize that. And we've had them come to our facility  
10 and try to give us a song and dance. And we watched their  
11 machines, and we watched to see if their reels are stopping  
12 before the bingo pattern is called, right? We watch a lot  
13 of things on these machines, because we want to follow what  
14 you have. That being said, there are a lot of vendors out  
15 there that are doing the right thing. There are a lot of  
16 tribes trying to do the right thing.

17 "The machine-certification process does not afford due  
18 process. The NIGC gives itself sole authority to certify  
19 labs, who then certify game classifications. This includes  
20 no appeal provision for laboratories and limits the tribes'  
21 right to a hearing. The most egregious part of the  
22 certification requirements to this tribe is that Commission  
23 objections can be raised at any time. The chairman or his  
24 designee may object to any certification within 60 days,"  
25 and we feel that's right and just. Heck, you can even have

1 it come out a little bit further than that as far as we're  
2 concerned. We want to make sure it's right.

3 "If no objection is raised within 60 days, the testing  
4 laboratory, requesting parties, and sponsoring tribe may  
5 assume the Commission does not object." Boy, I'd sure like  
6 to get it a little more clear-cut than that. "However,  
7 nothing precludes the Commission from objecting after 60  
8 days upon a show of good cause."

9 Folks, now, again, I'm not a legal-beagle. I'm not a  
10 lawyer, but I'm -- I don't know if double-jeopardy really  
11 applies in this situation; it probably doesn't, but please  
12 go with the idea here.

13 Once something is tried and made sure that it is or isn't  
14 whatever it's supposed to be, it should be whatever it is  
15 you deemed it to be, all right? Instead of just not  
16 objecting and then being able to come back to it, I think a  
17 fair approach to that would be to come forward and say:  
18 "Look, this is not a Class II and this is why."

19 And if it is a Class II, I don't know that somebody  
20 should be able to come back and do this again. Because what  
21 we're setting ourselves up for is exactly the situation that  
22 we are in right now, where we have followed all of the rules  
23 and we've done what we were supposed to do and we had that  
24 all changed on us.

25 And now we're going to go ahead and spend money and time

1 to go ahead and put a new system or game on the floor, and  
2 it's going to become profitable, and then we're going to  
3 have to yank it again because somebody looked at it later on  
4 and said, "Oops, that's not right." That doesn't seem --  
5 that doesn't seem fair to the tribes, to me.

6 "Again, who is going to explain to my tribe that,  
7 although we followed all the rules that NIGC set forth  
8 regarding Class II, the Commission saw fit to change those  
9 rules in midstream. Then, after setting these far-reaching  
10 new rules, a Class-II game or system is still not safe after  
11 having been submitted to the certifications standards, even  
12 after a 65-day objection window? Has this rule been  
13 proposed to ensure that an economically viable game does not  
14 make it out of the laboratory, or to ensure that NIGC, if  
15 they're not able to keep with up their end of the  
16 certifications process, is still covered?"

17 I don't mean that to be negative. I think you hear a lot  
18 of negative things in here. It really is a question to me.  
19 I don't understand why it was kept open-ended like that.

20 "Tribal governments are the largest employers in many of  
21 the areas that would be affected by these changes. The  
22 NIGC's proposed rules would result in a large loss of jobs  
23 at Class-II facilities. That means tens of thousands of  
24 American jobs would be lost in areas of the country that can  
25 least afford it. The Stillaguamish tribe employs the

1 majority of its membership in Tribal enterprises other than  
2 its casino. We do, however, employ natives from 20 tribes  
3 other than the Stillaguamish. With the loss of these  
4 machines, in regard to revenue generation, we will have to  
5 eliminate jobs within our facility. The unemployment will  
6 have a cascading effect on those tribes whose members we  
7 employ, some of which do not have facilities of their own"  
8 --that's the tribes--"to employ their membership."

9 So the Stillaguamish tribe has reached out to help the  
10 other tribes. A lot of the Tribal members are folks that  
11 don't have Tribal casinos, so they've come to us to help  
12 them out, and that's great. But again, the Stillaguamish  
13 needs to take care of their own first. They need to make  
14 sure that their costs are covered for their social services.  
15 If there is a dip in revenue and jobs have to be lost, those  
16 other tribal members--not Stillaguamish tribal members, but  
17 other tribal members--will be affected by this.

18 I'd like to also bring up: I have a friend. His name is  
19 Melvin Daniels. He runs Muckleshoot bingo. He was also  
20 part of the board -- advisory committee.

21 Now, he has a bingo hall that has 500 Class-II machines,  
22 or shortly will have 500 Class-II machines. He employed 300  
23 tribal members, or 300 folks, the majority of which are  
24 tribal members who grew up in his tribe or other tribes. I  
25 really like their bingo hall. I just really think they do a

1 good job.

2 Now, if Class II loses its viability, those folks are all  
3 out of jobs. That's a lot of jobs. And for each one of  
4 those jobs, there's a person behind that job. There's a  
5 family, there's kids, there's all kind of folks. So I wish  
6 the Commission would think about that. Very important.

7 "We believe the reclassification issues surrounding  
8 Class-II gaming is a serious political concern. There are  
9 states within the Union that have not entered into Class-III  
10 compact negotiations with the tribes within its boundaries,  
11 for whatever reason. As we understand it, this becomes an  
12 issue because 'Seminole Tribe of Florida versus Florida,'  
13 which was decided by the Supreme Court in March of 2006,  
14 does not necessarily guarantee good faith or sovereign  
15 immunity in Class-III compact negotiation." In other words,  
16 an 11th Amendment issue.

17 "In the State of Washington, Class-II gaming is the only  
18 leverage the tribes hold against a State government  
19 increasingly interested in revenue sharing. With the  
20 addition of several tribal casinos in the next two years,  
21 there will not be enough licenses to ensure the economic  
22 viability of these tribal enterprises. Those facilities  
23 will have to pursue the Class II alternative to fund their  
24 tribal programs. We have recognized the importance of the  
25 NIGC by following all of your rules and regulations to date.



1 That being noted, we urge you to do the following:

2 "Please remove the prohibition on autodaub and the  
3 10-second delay in play. These standards appear to be  
4 designed to limit participation rather than increase it.  
5 The two-second delay will force synchronicity between  
6 players and will remove the spontaneity of the games."

7 The only thing I can think of, and some of the folks in  
8 this -- there was a band out there in the '80s called Devo,  
9 and they were a tech band, and everything they did was  
10 synchronized and choreographed. And the only thing I can  
11 see in our 90 Class-II machines is every player being  
12 synchronized. It's going to look like something out of  
13 1984, an Orwellian nightmare.

14 So "Remove the display restrictions: two-screen and  
15 multiple-card-display requirements. This is a cost the  
16 tribes must absorb that is just not necessary."

17 Again, we in the State of Washington have no problems  
18 displaying that this is a bingo game. We absolutely promote  
19 it in our facility. And you've asked for, I think, two-  
20 inch-high letters. Well, folks, I'll give you two-foot-high  
21 letters, okay? I'll put flashing lights on the top of each  
22 one of those machines, because those are the economically  
23 viable machines in our house.

24 "Remove all provisions under which the NIGC attempts to  
25 assert jurisdiction over private, third-party gaming

1 laboratories. We feel this will lead to excessive pressure  
2 over vendors and ultimately to less innovative game design."

3 If the vendors need to cater to the laboratories that are  
4 catering to the NIGC, they're not going to cater to the  
5 customers. They're not going to cater to our players. So  
6 they're not going to put out the same sort of innovative  
7 games. They're going to put out cookie-cutter games, and  
8 revenue will fall. It's how it works. It's the difference  
9 between -- currently, out there -- a Bally's game and a  
10 Williams'. Now Bally's is a mammoth company. But Bally's  
11 titles are -- they just don't have any pop and sizzle,  
12 folks, but I will tell you that Williams' titles do, right?  
13 And the reason they do -- and Aristocrat titles do. They  
14 have great math and they have sizzle for the customers. We  
15 stand to take that away by the enforcement on the  
16 laboratories and in the way they're stated.

17 "The current definitions work to classify games. They  
18 are supported by court precedent. Please leave as written.

19 "Alternative classification and technical standards  
20 offered by tribes must be considered. The Commission must  
21 follow up with a report that explains why the NIGC  
22 disapproved of the alternatives or why NIGC has not  
23 incorporated a submitted alternative."

24 In your preamble, what I read was, of course, the tribes  
25 had recommended these things, but the Commission just chose

1 to move away from them. You really didn't explain why. You  
2 know, there was no meat in that that I could look at and go:  
3 "Oh. Oh, here's why. I didn't think of that." You know,  
4 but when they're not there, all you can think of is you  
5 don't care what it is that the tribes recommended to you.

6 What's out there -- and I'm sure that you've heard this a  
7 ton of times here. I know that I have talked to you several  
8 times, although you wouldn't remember me, but it seems like  
9 you guys are always getting a bad rap, and you shouldn't.  
10 But we feel, in Indian country, that the DOJ has really made  
11 inroads here, and we're not quite sure why. And the reason  
12 we're not quite sure why -- if the DOJ needed to make  
13 inroads, all right, certainly they could, and certainly they  
14 must if they need to.

15 The problem that we see is the paternal sort of feeling  
16 from the NIGC that's coming out, that the tribes aren't  
17 capable of regulating to the capacity they should. And  
18 that's certainly not true.

19 These tribal folks, they're smart, they do good work,  
20 right? And they have good facilities. By and large,  
21 they're great business folks. Now, you have some bad ones  
22 out there, and I understand that. But can we take that on a  
23 case-by-case basis?

24 "The effective date/compliance deadlines are inadequate  
25 to allow the tribes and manufacturers to design, certify,

1 and implement games which are compliant. The NIGC must  
2 strike Section 546.10(e)(3). Currently, in the State of  
3 Washington, it takes six to eight weeks to take delivery of  
4 a preapproved Class-III game."

5 That's because of the vendors, the backlog of the  
6 vendors. That's just backlog. That's through the gaming  
7 laboratories, through the folks' own Q&A process, the  
8 manufacturers' Q&A process, through GLI and through the  
9 State. That's -- all that's already been taken care of, and  
10 it still takes us six to eight weeks to get a new game.

11 "There's no possibility that the vendors can design a  
12 game or system to NIGC specifications, get it submitted  
13 through the companies' own quality-assurance programs, and  
14 still get it to the gaming labs in six months."

15 I talked to numerous manufacturers on this, and it's all  
16 the same thing. They just threw up their hands. There's no  
17 way. And the six months, that is -- that is a deal-breaker.

18 "Now, add in the laboratory-certification process, its  
19 place in the queue, and the vendors' ability to get the  
20 product out of the current Class-II market of 50,000  
21 machines, and you're looking at more than a 16-month window  
22 to institute these changes. NIGC must insert a tiered  
23 implementation of regulations, allowing for orderly  
24 transition and change-out of equipment."

25 So if this does become -- and I hope it doesn't, but

1 something is going to change and I understand that -- it's  
2 got to be done -- it has to be -- it has to be logical and  
3 reasonable, and it has to be -- there has to be an ability  
4 to actually do it, and right now there isn't.

5 And I know that you left a clause in there that says:  
6 "Well, we will grant an additional six-month time period for  
7 certain circumstances." At this point, we're going to have  
8 to put that six months in there for every circumstance. The  
9 vendors aren't going to do it. They just can't. It's not  
10 that they won't; they can't.

11 "The NIGC must hold public hearings on the proposed  
12 classification and forthcoming technical standards. The  
13 proposed classification regulations and technical standards  
14 must be published in the Federal Register, together, at  
15 least once more to ensure adequate review and comment  
16 period.

17 "In closing, we feel the NIGC would best serve Indian  
18 country and the Stillaguamish Tribe of Indians by stepping  
19 away from those proposed changes. These changes are bound  
20 to be disputed and challenged in federal courts. The money  
21 that the tribes and federal government will spend on this  
22 issue would be far better spent on social services, youth  
23 scholarships, and elder care."

24 I just -- I can't see -- I can't see knowing that  
25 everyone is so up-in-arms about this, and they are, and know

1       that some of the issues in here -- there are some things in  
2       here that raised -- and again, I'm not a lawyer, but where  
3       it looks like there's some issues where a legal team could  
4       really, you know, take you folks to court and tie this up  
5       for several years. That money can be better spent, folks, I  
6       think. You know, it's just a little guy's opinion. Hey,  
7       it's just a small tribe's opinion, but we really feel that  
8       at least our money would be better spent on our youth and  
9       our eldercare.

10       Do you have any comments, folks?

11               MS. SWANSON: You did a fine job.

12               MS. COLEMAN: I have a number of questions. Would  
13       you mind?

14               MR. PARKER: Please.

15               MS. COLEMAN: You said that your Class-II games  
16       are Rocket games?

17               MR. PARKER: Yes, they are.

18               MS. COLEMAN: Is that what it is? Are they the  
19       ones that are consistent with the most recent Rocket?

20               MR. PARKER: Yes, Rocket, fast play.

21               MS. COLEMAN: Okay, so it's a three-touch game, is  
22       it?

23               MR. PARKER: There is three-touch on it, yes.

24               MS. COLEMAN: Is it played with the three-touch,  
25       or is it played with one-touch?

1 MR. PARKER: Right now, we're playing with the  
2 autodaub.

3 MS. COLEMAN: Okay.

4 MR. PARKER: Now, we have seen where -- where  
5 Bally's is down the street in Muckleshoot bingo, and they  
6 have the three-daub touch. The machines are deserted. It  
7 takes too much time for the players to do it. And rather  
8 than forcing the players, we figure there's something we can  
9 put on the machine to be able to, you know, hit your  
10 three-touch standard or whatever.

11 But the players are -- they want action. That's why  
12 they're playing those games. So they want to spin as  
13 quickly as they can. And I understand the ball drops still  
14 have to take place, and that's great.

15 We should have, you know -- bingo is more than one  
16 player, right? So even the six -- the six players, I don't  
17 have an issue with that, but waiting two seconds for six  
18 players, and if you don't get six players in that long but  
19 you get two players and you continue on with the game there.  
20 It seems rather arbitrary to me, but that's just me. I  
21 don't get that.

22 I mean, it's like waiting for a bus, I guess. You know  
23 the bus is going to stop, and you have got to get there, all  
24 right? And the bus is going to leave, and if you haven't  
25 played, you haven't played. So also, I think, with us,

1 we're tied into 82 different facilities with our games.

2 We're going to have six players, we're going to have six  
3 players darn near any time.

4 I mean, our Rocket machines are at 85-percent capacity  
5 almost all of the time. And it's true. I invite you to  
6 come up and see our casino up in Arlington, because it's  
7 something that can be proven. It's substantial; it's there.

8 MS. COLEMAN: How does this Rocket game compare to  
9 your Class III? You said that you're actually making more  
10 money on your Class II than Class III. Why is that? What's  
11 the difference? What's the distinctions?

12 MR. PARKER: Well, in the State of Washington, you  
13 have central determinants, so everything goes to the back of  
14 the house. So for instance, if you're in a poker game and  
15 you have four jacks and you throw them away, the cards that  
16 come up are not going to be four jacks, but the payout would  
17 still be four jacks.

18 As soon as you hit the button the first time, everything  
19 is telegraphed back to the UGVs in the back room, universal  
20 game controllers, and they know what it is. It's based kind  
21 of on pull tabs and the bases of central determinant.

22 So on those games, the State of Washington throws some  
23 limitations on us. We cannot bet over \$5. That's not a big  
24 deal to us, because we're 85-percent pennies in our house.  
25 So we have no \$5 games.



1           At a matter of fact, we have very, very few quarter  
2 games. We have very, very few nickel games. It's all  
3 pennies. But what it does give us is the ability to have  
4 multi-denominations. It gives us the ability to put cash in  
5 the machines. The State of Washington does not allow -- in  
6 the State of Washington, you must take your cash to a CET  
7 machine, cash exchange terminal, exchange your cash for a  
8 ticket, and then go play the machine. And what happens when  
9 you're dealing with a system like that is that you run out  
10 of money on a ticket, and they start thinking to themselves:  
11 Wow, do I really want to walk over there and get a ticket?  
12 Not: Can I pay for my note or anything like that, because  
13 we are a little entertainment house. There's no high  
14 wagering at all.

15           So now they've got to get up -- and the majority of our  
16 folks during the daytime -- and our place is packed --  
17 what's our median age? 80?

18           MR. GOODRIDGE: 80.

19           MR. PARKER: Those folks have walkers, they've got  
20 the Little Rascals, they're got all of that stuff; and  
21 they're crashing into things and tipping over. And any  
22 chance you've got of them not having to walk around is  
23 wonderful for them. So they can go over in the Rocket  
24 machines and take whatever cash--they love it--themselves  
25 and play it in that.

1           There's also wide-area progressives. For instance, right  
2 now, on our Class-III side, we have a small progressive  
3 jackpot of \$5,000 for the floor. Now, to me, \$5,000 is  
4 great, but for our players, they'd kind of like a little  
5 more than that. We have a game, one of our Class-II games,  
6 it's an -- what is that?

7           MS. SWANSON: Milk Money?

8           MR. PARKER: No. Not Milk Money. It's the other  
9 one.

10          MS. PELOR: Cash Cow?

11          MR. PARKER: Cash Cow. Very good. Cash Cow,  
12 right now, has a -- at the penny level, they have a jackpot  
13 of \$1.4 million. There is a 90 -- or yeah, 90 cents top  
14 bet, with pennies. That's a heck of a return on investment  
15 on a 90-cent bet. Not that we get 90-cent bets. Our  
16 average bet is 71 cents, but we like it. I'm sorry.

17          But those few differences between Class II and Class III  
18 have made a huge impact on our facility. And now, most  
19 people put their Class-II machines in a back hall or  
20 whatever. We've got those things smack-dab inside of our  
21 front door. Now, when you walk in the front door, the first  
22 thing you see is table games and Rocket. You've got to kind  
23 of veer off to the side if you go to the Class III games.

24          Also, for us and for our facility, Class II -- we follow  
25 all of the rules. We have a -- we have 27 PGA folks within

1       our facility of, well, 515 machines. So we have ample  
2       coverage to make sure that our regulations are okay.

3       But the State still comes in and mandates that they come  
4       and check up on our folks, who are doing the right thing. I  
5       mean, it costs us in excess of \$90,000 a year to have the  
6       State come in on just that topic, all right? For this, we  
7       have less cost and we still follow our rules and we can  
8       offer a better product. So we have less regulation as far  
9       as State interference on our floor -- well, State  
10      interference thing -- but it really is true. I mean, we  
11      have our own regulators, and we can offer a better product  
12      and, to us, that really makes strong, physical sense.

13               MS. SWANSON: Kevin, don't they bill you, too, for  
14      their time?

15               MR. PARKER: Oh, they do. And then I know they're  
16      coming.

17               MR. SMITH: 70 bucks an hour.

18               MR. PARKER: 70 bucks -- \$75 an hour. My  
19      goodness.

20               MS. SWANSON: For each one.

21               MR. SMITH: Right.

22               MS. COLEMAN: I had another question.

23               MR. PARKER: Yes.

24               MS. COLEMAN: You said that you expected the  
25      economic impact to be, on 50,000 machines, at a billion

1 dollars a year. Can you tell me where you got those  
2 figures?

3 MR. PARKER: Well, what we've got is -- there's  
4 50,000 -- I believe there's 50,000 Class-II machines out  
5 there. We gave a call to Bally's, IGT, GTT, Rocket,  
6 Cadillac Jack, and Nova. And between those, we ended up  
7 with right about 50,000 machines. You take that -- now, for  
8 us, we're only operating at \$185, but Yakima's machines, a  
9 great portion of theirs are doing 300 a day. So if you take  
10 a figure right around in there, and you go ahead and you  
11 times it out, all right, you come up with a figure in the  
12 millions. All right? And it's in the high millions, all  
13 right?

14 So when you go between 250 and 300 dollars per machine,  
15 per day, 365 days a year, all right, it comes out with --  
16 you come out with a pretty large figure. Then use that  
17 local multiplier, because every local area will be affected.  
18 Every tribal entity will be affected by this.

19 All of the social services for the tribes will be  
20 affected by this, because, like it or not, casinos have  
21 become the main economic engines for most tribes, all right?  
22 We help fund their other tribal enterprises, which is great.  
23 Because that's what we'd like to get to, right? We'd like  
24 to get away from gaming in the future. We'd like to get to  
25 the point where our health clinics and our mental-health

1 clinics and our methadone facility are all doing  
2 wonderfully, right, because that's giving back to the  
3 community.

4 MR. HOGEN: Well, you've put a lot of thought into  
5 the study of what we proposed, and we much appreciate what  
6 you've had to say, and we'll seriously consider it. If we  
7 could get a copy of your paper, that would be useful.

8 MR. PARKER: Here's another one.

9 MR. HOGEN: Thank you. If there's one thing  
10 that's been not a secret but kind of an open and notorious  
11 issue is the fact that NIGC, as well as the Justice  
12 Department, has been seriously looking at the issue of how  
13 can we better distinguish between Class II and Class III  
14 gaming? And so I don't think anyone should assume that  
15 what, you know, had been permitted in an advisory opinion  
16 that was written in 2004 or whatever -- that that would  
17 never ever change.

18 And hopefully, the changes won't be so dramatic and so  
19 drastic that we will see great shortfalls in meeting unmet  
20 needs in Indian country. But what I think it points out in  
21 part is: There is a need for some clarity.

22 Now, I assume that a couple things will happen if and  
23 when we finalize regulations in this regard. One, we will  
24 be sued. There will be some money spent litigating whether  
25 the NIGC did have the authority or did do the right thing or

1 not. And that will be a good thing, I think, to bring some  
2 clarity to this important issue.

3 Secondly, I'm sure that, as soon as the ink is dry on the  
4 regulations, technology will probably mandate that the next  
5 Commission or, if we're still there, this Commission,  
6 address that and modernize the regulations so that new  
7 developments in technology can be accommodated.

8 But IGRA created the National Indian Gaming Commission  
9 and mandated that we do some oversight, and it said  
10 "promulgate federal standards so tribes can do Class-II  
11 gaming with the assistance of electronic and technologic  
12 aids, but if a game is played and it becomes an electronic  
13 facsimile of a game of chance, then it's Class III."

14 And so this, I think, is an area that cries out for one  
15 of those standards that the NIGC was directed to write, is:  
16 What can you and can't you do? We've tried to write it so  
17 there will be flexibility and not just say, "These are  
18 things you can't do," but rather, some things that you can  
19 do.

20 I think, if there's a theory or whatever behind the  
21 approach that I take, personally, anyway -- you went over  
22 the elements of bingo, and one of the things is you've got  
23 to have a card and you cover the numbers when they are  
24 called. And I think that means there's got to be some  
25 player participation. And if we get to the point where you

1 push the button once and the machine does everything else, I  
2 think we've crossed that line into the electronic facsimile.

3 We've tried to write these things so that there will be  
4 fun bells and whistles, but there will be player  
5 participation. And if the player fails to participate, they  
6 can sleep the game, just as you can with paper bingo. Have  
7 we slowed it down too much by accommodating that  
8 participation? That's one of the things we have to look at.

9 MR. PARKER: Sir, as you're looking at it, it's --  
10 it's devastating the economic viability of the games  
11 themselves on the floor. I mean, again, I could not find  
12 anywhere, where it is in the bases of IGRA, that states that  
13 Class II must be distinctive. Can you help me with that?

14 MS. COLEMAN: I think it's the legislative  
15 history. It says it needs to be "readily distinctive."

16 MR. PARKER: Okay.

17 MR. HOGEN: So you addressed the critical areas,  
18 and we will study carefully what you had to say and may call  
19 you back and say, "This is interesting, that your Class II  
20 is outperforming Class III. We don't hear that very often,  
21 and maybe you can give us more information," or whatever.  
22 Is there any thought being given to abandoning Class III and  
23 just going all Class II, at your facility?

24 MR. PARKER: If I had my druthers, sir, if we  
25 could open the casino again, I would have done just that,

1 because it's -- it's a straightforward game; it's a good  
2 game, you know. And you don't have -- you don't have the  
3 limitations imposed by the State.

4 Now, we still have our PGA through our NIGC, right? We  
5 still have everything we need to have our regulations. We  
6 still have our ICs, but it's more profitable, and it just  
7 makes more sense. Now, we won't do that. We'll stick with  
8 our licenses, but in -- you know, if things were to stay the  
9 way they were now, in 18 months, I'd have a fairly strong  
10 argument for my Enterprise Board to tell them, "Look, let's  
11 go ahead and lease those Class-III licenses back out to  
12 another tribe that can utilize them, because we're doing  
13 fine with the Class II that we have."

14 Sir, I have to tell you, to me, it seems as if -- and  
15 again, here comes that 11th Amendment issue again. It seems  
16 like we're doing the bidding of the states here. There are  
17 states out there that do not offer Class-III gaming. My  
18 state happens to be one of them. My tribe's in the State of  
19 Montana, all right? Maybe in a limited sort of form, but  
20 not really. It seems like the governments are supposed to  
21 do that, as we see it. You know, they were supposed to work  
22 with the tribes to go ahead and set up compacts so they  
23 could work together.

24 In our state right now, our governor is sitting back and  
25 saying, "Well, you know, if you give me a little some-some,



1 then I'll give you some other stuff." Now, as I read it,  
2 that's not supposed to be. That's -- that's wrong. But --  
3 but we found some provision and some people hope to make it  
4 so? What's right is right, all right? And what we've done  
5 is right and we followed all of the rules and now -- now, I  
6 have got to explain -- I'm going to have to explain to Ed--  
7 although he's here, so this is your information--exactly  
8 what's happening here and why this is happening. He's going  
9 to say, "Look, you bonehead, have you not followed the  
10 rules?" "Yes, sir, I did. I followed every single rule."  
11 "What do you mean, you 'followed every single rule'? If you  
12 followed every single rule, we wouldn't be here." "Well,  
13 yes, sir, we are, and I don't know why."

14 Really, we urge you -- I mean, I understand that you feel  
15 some changes have to be made; and, again, by defining what  
16 Class II isn't, I don't believe -- because of exactly what  
17 we said, technology doubling on itself so quickly. We need  
18 to define what bingo is, what Class II is, as opposed to  
19 what it isn't, and stick with that. It's the only way we're  
20 going to be able to keep up. You know, holy cow, who knows  
21 what they come out with next?

22 MR. GOODRIDGE: Can you differentiate Class II  
23 from facsimile and the electromechanical facsimile and take  
24 a look at the -- bingo, for example, is the person playing  
25 with a person all the way up the line--and Kevin, feel free

1 to jump in here--where in the Class IIIs, it's more of the  
2 person against the house. You know, I think it's a matter  
3 of how we're going to have to go about defining what bingo  
4 is and not so much what it isn't.

5 MR. PARKER: What we know -- Class II isn't house-  
6 banked, all right? We know that Class II is not house-  
7 banked. Anything that's house-banked is Class III. And  
8 that's a very simple form. And I know that that's boiled  
9 way down, but that really is it.

10 MR. HOGEN: That's not what the Indian Gaming  
11 Regulatory Act says, and that's what one of our proposals  
12 would do, is to say, "These games may be house-banked."  
13 What you've said is absolutely true with respect to card  
14 games, but -- and I think I get the drift of the theory.

15 I mean, when you get a bunch of people playing bingo,  
16 they're going to play for that money that they've paid to  
17 buy their cards. Now, if it's a blizzard and nobody else  
18 shows up and you're still giving away, you know, the \$5,000  
19 prize, you know, you're banking that game, and nothing in  
20 IGRA says you can't do that.

21 But at one time, the Commission attempted to utilize that  
22 as a bright-line distinction. The problem is that's not  
23 what the Indian Gaming Regulatory Act said. We've looked at  
24 that carefully. We thought maybe that was a good standard  
25 to utilize, but there really isn't any support for it in the

1 Act.

2 MR. PARKER: Well, there's one thing we can do on  
3 that, if you can find support for it, and that's -- you have  
4 progressive contributions. You have player contributions,  
5 all right, that can -- if you do have a blizzard, all right,  
6 you have it banked; all that money still needs to be  
7 returned, all right, to players. It doesn't necessarily  
8 have to be returned to those players playing that particular  
9 game at that time. And I think that's where one of the  
10 fixes is, right there. That's something that's readily  
11 available on the market today.

12 And I really do think -- and then you can make that  
13 bright-line distinction at house-banked, because then it's  
14 not house-banked. This was player participation at a  
15 quarter of a cent, you know, a 16th of a cent, whatever it  
16 is, that sets it aside to be able to go ahead and bank that  
17 for a period of time as to when there is a blizzard or there  
18 are less than, you know, six players, is what the  
19 distinction is I had.

20 So there's some good ideas out there, folks. There's  
21 some awfully smart people -- much, much smarter than me.  
22 Most of these folks are -- well, all these folks are. That  
23 was political. But if we could get those folks back to the  
24 table to help you, I mean, they're a wealth of knowledge,  
25 and, I mean, they could help us through this. I truly

1 believe that.

2 Because otherwise -- see, I'm -- I have a hard time with  
3 a litigate society. I have a hard time thinking that taking  
4 this to court is the right way to do things. I think it's  
5 just the way my mom raised me. I mean, I'm not from the  
6 Beltway, I'm not from -- I'm just from rural America. I  
7 don't get that. I don't get getting a distinction through  
8 the law when logic and reason could have done it in the  
9 first place. I mean, to me, that's a waste of taxpayer  
10 money, and that's a waste of tribal funds. But again, it's  
11 just me.

12 MR. HOGEN: All right. Well, we'll take very  
13 seriously what you have said to us, and if you have  
14 additional comments, we would much appreciate those. There  
15 may well be a public forum that takes some additional  
16 discussion, and perhaps we'll make an adjustment with  
17 respect to the comment period. So with that said, we'll  
18 bring this consultation session to a conclusion and thank  
19 you for your participation.

20  
21 (The consultation session for July 24, 2006  
22 concluded at 5:39 p.m.)  
23  
24  
25

## C E R T I F I C A T E

STATE OF WASHINGTON                    )  
  )     ss  
County of King                         )

I, the undersigned Notary Public in and for the State of Washington, do hereby certify:

That the annexed transcript of the Monday, July 24, 2006 Class II Consultation, was taken stenographically by me and reduced to typewriting under my direction;

I further certify that I am not a relative or an employee or attorney or counsel of any of the parties to said action, or a relative or employee of any such attorney or counsel, and that I am not financially interested in the said action or outcome thereof;

I further certify that the annexed Monday, July 24, 2006 Class II Consultation, is a full, true, and correct transcript, including all objections, motions, and exceptions of counsel made and taken at the time of the foregoing proceedings.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Official Seal this 31st day of July, 2006.

*Linda M. Grotefendt*  
Linda M. Grotefendt, CCR  
Notary Public in and for the  
State of Washington, residing in  
Renton.  
My commission expires March 10,  
2008.  
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